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227155

May 25, 2010

VIA FEDERAL EXPRESS

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

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Re: STB Docket No. AB 1043 (Sub-No. 1)
Montréal, Maine & Atlantic Railway, Ltd.--Discontinuance of Service
and Abandonment--In Aroostook and Penobscot Counties, Maine

Dear Ms. Brown:

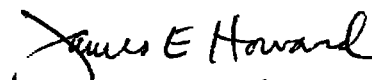
On behalf of Montréal, Maine & Atlantic Railway, Ltd. ("MMA"), enclosed for filing in the above-captioned matter are the following:

1. The original and 10 copies of a highly confidential version of MMA's Rebuttal Argument and Rebuttal Verified Statements; and
2. The original at 10 copies of a public version of MMA's Rebuttal Argument and Rebuttal Verified Statements.

Also enclosed are 3 disks containing the highly confidential version and 3 disks containing the public version of the enclosed documents. Please let me know if the Board would like any of the material on the disks in any different format.

Please contact me if you have any questions or need any additional information.
Thank you very much for your attention to this request.

Very truly yours,


James E. Howard

Enclosures

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB 1043 (Sub-No. 1)

MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.--
DISCONTINUANCE OF SERVICE AND ABANDONMENT--
IN AROOSTOOK AND PENOBSCOT COUNTIES, MAINE

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REBUTTAL ARGUMENT OF MONTRÉAL,
MAINE & ATLANTIC RAILWAY, LTD.

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Dated: May 25, 2010

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB 1043 (Sub-No. 1)

**MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.--
DISCONTINUANCE OF SERVICE AND ABANDONMENT--
IN AROOSTOOK AND PENOBSCOT COUNTIES, MAINE**

**REBUTTAL ARGUMENT OF MONTRÉAL,
MAINE & ATLANTIC RAILWAY, LTD.**

INTRODUCTION

In this proceeding, Montréal, Maine & Atlantic Railway, Ltd. ("MMA") is seeking authority from the Surface Transportation Board (the "Board") to abandon and discontinue service on approximately 233 miles of line in Penobscot and Aroostook Counties, Maine (the "Abandonment Lines"). On February 25, 2010, MMA filed its application and supporting evidence, which demonstrate the justification for the relief requested. A number of parties, including the State of Maine (the "State"), several customers and a number of business development and community organizations, have filed statements in opposition to the abandonment. MMA submits this Rebuttal Argument and the accompanying Rebuttal Verified Statements in response to the

arguments and evidence offered by the opponents and in support of the application. As demonstrated below, approval of the abandonment is fully justified.

The underlying theme of the opposition centers on the extraordinary nature of the current economic environment, both nationally and in Maine. Opponents argue that the current economic downturn is temporary and that there will eventually be a recovery from the current recession. They contend that business activities will return to pre-recession levels and even exceed those levels. The loss of rail service, it is contended, will prevent customers currently served by MMA on the Abandonment Lines from enjoying the recovery and competing in their respective markets. All that is needed, claim the opponents, is patience for a few years. MMA should “ride out” the recession so that it will be there when there is a recovery.

This perspective overlooks several important factors. First, MMA is itself a Maine business, and its economic and financial results are tied inextricably and inexorably together with the customers that MMA serves. MMA has shared the pain--indeed, MMA has endured more than its share of pain--over the last several years, as exemplified by cumulative losses of approximately \$12 million from 2007 through 2009 and reductions in employment from 325 to 205. MMA is in a significantly weakened financial state that will not be easily turned around even with a recovery in the economy. Second, the primary drivers of the economy in Northern Maine, the paper and forest products industries, were in a steady downward slide even before the recession. The recession simply accelerated and exacerbated--exposed, if you will--the fragility of these industries, particularly in Maine. An economic recovery will not guarantee a return to the higher business levels experienced in years gone by.

Quite apart from the legal issues and the debate in this proceeding as to whether MMA has demonstrated justification for an abandonment, MMA cannot, as a practical matter, continue to sustain the loss producing operations on the Abandonment Lines for another 3 to 5 years while the economy recovers. The physical condition of the Abandonment Lines continues to deteriorate, and there is no cash flow from operations or any other source to make the capital investments necessary to provide safe and efficient service. Operations will literally grind to a halt well before there is any chance for profitable operations on the Abandonment Lines.

From the perspective of both MMA and other rail customers in the State of Maine, the problem extends beyond the Abandonment Lines. MMA has, in effect, subsidized the operation of the Abandonment Lines at the expense of the rest of its system. If relief is not provided in this proceeding, rail service on the balance of the MMA system will be threatened.

Looking at these issues from a somewhat different perspective, the question is what do the opponents really expect to accomplish if their arguments are accepted and the abandonment is not approved? Do they really want rail service on lines that cannot be rehabilitated due to a lack of funding, thereby leading to slower and slower service and eventually to service disruptions for safety reasons? Do they want rail rates increased to a substantially higher level that would be necessary to enable MMA to make operations on the Abandonment Lines profitable? Do they want MMA to continue to operate on the Abandonment Lines at the risk of service reductions or a complete loss of service on other MMA lines within Maine? Does anyone really want another railroad bankruptcy in Maine?

A review of the opposition statements might lead one to believe that this is a situation in which MMA is trying to punish customers by withdrawing its service. Nothing could be farther from the truth. MMA is a railroad, and its mission is to provide rail service. Unfortunately, MMA has long since reached the point at which it can no longer afford to continue the service on the Abandonment Lines. MMA will soon be at a point at which it no longer can physically provide the service as the lines continue to deteriorate and funds for rehabilitation are not available. In these circumstances, MMA is simply seeking the same type of relief that any of its customers would pursue, or already have pursued, faced with declining revenues and continuing losses.

Even though it is pursuing the abandonment, MMA continues to focus on preserving the Abandonment Lines for rail service by means of a sale to the State. MMA understands and accepts the fact that, if there is such a sale, the State will solicit proposals to operate the line and that MMA may not continue to be the operator. Furthermore, MMA is willing, if there is an agreement with the State, to negotiate arrangements to maximize the ability of a new operator to perform efficiently.

As MMA has stated consistently, abandonment is a last resort. If, however, the State is unable to make the purchase, MMA should be granted, and permitted to exercise, the abandonment authority that it seeks in this proceeding. MMA should, after exhausting the possibilities of a sale, be permitted to discontinue the operations and attempt to realize a return on an investment in excess of \$20 million that is currently *generating a negative return*.

The arguments of the opponents against abandonment are predictable. They argue that the avoidable losses estimated by MMA have been overstated. They contend that the business levels of rail customers, and, therefore, MMA's revenues, have been temporarily depressed and that business activities will eventually go back to pre-recession levels or even higher, thereby restoring MMA's profitability on the Abandonment Lines. Certain of the opponents imply that the operating losses are a self-inflicted wound caused by poor service or inadequate marketing efforts. The opponents also assert that alternative transportation after an abandonment will not be available or will be too costly. Finally, there are a number of generalized statements to the effect that a loss of rail service would be harmful to the development of Aroostook County. As shown below, there are complete answers to these arguments.

There is no debate, however, between the opponents and MMA concerning the legal standard that the Board must apply in deciding this case. The test is whether the harm to MMA as a result of being required to continue rail operations outweighs the harm to customer and community interests. As demonstrated in the application and below, the balance weighs heavily in favor of granting the application. As shown below, MMA is incurring substantial avoidable operating losses on the Abandonment Lines. Significantly, even if the economy in Northern Maine returns to prerecession levels, which is doubtful, the Abandonment Lines cannot be operated profitably. The problem is endemic to the paper and forest products industries in Northern Maine, and the long-term trend line will not reverse itself—the passage of time will not cure the problem. Furthermore, as confirmed below, adequate alternative transportation options are available.

MMA is not insensitive to the arguments concerning the impact of an abandonment on rural and community interests. As noted above, MMA is itself a business operating in Aroostook County, and it understands the environment. Local and community interests have articulated their concerns that abandonment will have adverse impacts on economic development and employment. These concerns are for the most part unquantified and, to the extent that attempts at quantifiable predictions have been made, they are unsupported by any data or analysis. Whatever those impacts, however, they are outweighed by the continuing operating losses incurred by MMA, which, together with the foregone opportunity costs and enormous rehabilitation expenses faced by MMA, tips the balance in favor of allowing the abandonment.

ARGUMENT

I. MMA Is Incurring Substantial Avoidable Losses

A. The Critiques By The State And Irving Are Unpersuasive

The State and Irving have offered various arguments in an attempt to show that the avoidable losses projected by MMA have been overstated. The arguments, which are addressed in detail in the Rebuttal Verified Statement of Robert C. Finley ("Finley Rebuttal VS"), do not undermine the conclusion that MMA is incurring substantial avoidable losses from the operation of the Abandonment Lines.

For the reasons set forth by Mr. Finley, MMA has complete answers justifying rejection of most of the arguments. In certain instances, however, Mr. Finley has made adjustments to his analysis. First, the number of freight cars taken into account for purposes of avoidable costs in the Forecast Year has been reduced by 354, totaling \$[] in lease rental costs. This reduction is appropriate, because the leases for these cars are expiring at various times during the Forecast Year. Finley Rebuttal VS at 3;

Rebuttal Verified Statement of Robert G. Grindrod (“Grindrod Rebuttal VS”) at 3-4.

Second, Mr. Finley had inadvertently included as an off branch cost the local movement of 8 cars on the Abandonment Lines. This resulted in a reduction of \$[] from the off branch costs as originally calculated. Finley Rebuttal VS at 7. Finally, as a result of the increase in net liquidation value of the rail, ties and other track material, as explained below, Mr. Finley recalculated the opportunity costs and other elements of Exhibit 1 that depend upon that liquidation value.

In order to take into account the changes described in the foregoing paragraph, Mr. Finley has redone Exhibit 1, as defined in the Board’s abandonment regulations. Exhibit B attached to the Finley Rebuttal VS shows the avoidable loss and return on investment using across the fence values for real estate, and Exhibit C shows the avoidable loss and related information on the basis of the corridor values for the real estate. The avoidable loss for the Base Year, on the across the fence basis, is \$[], and for the Forecast Year it is \$[].

The Finley Rebuttal VS provides a detailed, point by point response to the arguments of the State and Irving. The following summary touches on certain of those arguments, but complete answers are set forth in the Finley Rebuttal VS.

The State’s consultant, Gary V. Hunter, contended that various avoidable costs for locomotives, freight cars and mechanical employees were overstated, because, in Mr. Hunter’s view, MMA had “excess capacity” in these categories. Mr. Grindrod has explained the operations on the Abandonment Lines and the justification for including the locomotives and mechanical employees that were taken into account in the avoidable loss analysis. Grindrod Rebuttal VS at 2-5. There is no basis to reduce these expenses. As

explained above, MMA has made an adjustment for the number of freight cars in the Forecast Year, based upon the expiration of leases, but the adjustment does not detract from the conclusion that all 760 cars were attributable to the Abandonment Lines as avoidable costs in the Base Year.

As noted by Mr. Finley, Mr. Hunter is essentially expressing his view as to how MMA should have operated the Abandonment Lines, and the term "excess capacity" is really a description that fits any line that is a candidate for abandonment--insufficient revenue to support the costs associated with operation of the line. Finley Rebuttal VS at 3. Mr. Hunter's view does not change what costs should appropriately be considered to be avoidable. The avoidable costs presented by MMA, as adjusted by Mr. Finley in his Rebuttal Verified Statement, are appropriate, and the State's overall argument should be rejected.

Both the State and Irving argue that certain new expenses that MMA will incur after the abandonment in order to operate the line between Van Buren and Madawaska, which will remain in service, should somehow be offset against the avoidable costs. A complete answer to this argument is that nowhere in the Board's regulations governing abandonments is any such offset mentioned, much less required. The regulations require the calculation of revenues and expenses that are attributable to operations on the Abandonment Lines, not to operations after abandonment on some other line.¹

¹ The State has suggested that its claim under certain rail funding agreements with MMA should also be considered an offset against avoidable losses. MMA does not agree with the State as to MMA's liability or, if liable, the amount of the claim. In any event, the claim is not relevant to the abandonment proceedings and, moreover, is the type of contract claim that the Board routinely declines to decide.

Even if these expenses were relevant, they have been grossly overestimated by Irving's consultant, Thomas D. Crowley. As explained by Mr. Grindrod, the cost of a facility for routine repairs to locomotives and freight cars and associated costs to operate the line after abandonment are well below Mr. Crowley's estimates and will be entirely manageable by MMA. Grindrod Rebuttal VS at 5-7.

Mr. Crowley, relying upon various provisions of the Uniform Railroad Costing System ("URCS"), has taken issue with several off branch costs as calculated by Mr. Finley. Mr. Finley has addressed each of the issues to the best of his ability, given the fact that Mr. Crowley has not cited any regulations and has not provided any workpapers that would facilitate an understanding of his calculations. Finley Rebuttal VS at 7-9. In any event, Mr. Finley has described how he applied the URCS program in order to develop the off branch costs. The methodology was consistent with the regulations, and URCS principles were correctly applied. Finley Rebuttal VS at 8-9.

Mr. Crowley also argues that certain revenues from current traffic on the Abandonment Lines should be an offset against the avoidable losses, because revenues from such traffic may be realized by MMA after abandonment. This argument is similar to the argument, discussed above, that expenses on the Van Buren line should be offset against the avoidable costs. The answer is the same in both cases--the regulations require calculations of revenue attributable to the Abandonment Lines for the Base Year and the Forecast Year, both of which take into account only current operations of MMA on the Abandonment Lines. There is no requirement, nor should there be in order to assess the results of the current operations, to project or take into account traffic that might be realized on other lines after an abandonment.

B. Even If Revenues Were Higher, There Would Be Substantial Losses

In order to test the hypothesis offered by several opponents, Mr. Finley estimated the avoidable loss on the assumption that MMA carloads and revenues attributable to the Abandonment Lines were at a substantially higher level. Finley Rebuttal VS at 9-10. Mr. Finley used 2005, which was MMA's best year, exceeding the Base Year by [] carloads and approximately \$[] million in revenues. Even with carloads and revenues at this level, the avoidable loss for the Base Year was approximately \$[] million and the loss for the Forecast Year was approximately \$[] million. Exhibit D attached to Finley Rebuttal VS. The conclusion is that, even if the additional traffic and revenue projected by the opponents came to fruition, MMA would still be suffering avoidable losses of the same order of magnitude, which is substantial.

II. Opportunity Costs And Subsidy Payments Are Substantial

Irving and the State have taken issue with several other aspects of Exhibit 1 as prepared by Mr. Finley. They have argued that the rehabilitation costs have been overstated, that the net liquidation value ("NLV") for rail, ties and other track material is lower than estimated by MMA and that a corridor methodology should not be used to estimate the value of the real property included within the right-of-way. Each of these issues is addressed separately later in this Rebuttal. For the reasons outlined below, Mr. Finley has adjusted Exhibit 1 to reflect a new NLV for rail, ties and other track material of approximately \$[] million. As a result of this change, opportunity costs are \$[] million (across the fence) and \$[] million (corridor) for the Base Year. Finley Rebuttal VS at Exhibit A.

For purposes of calculating the subsidy, Mr. Finley used the full amount of the rehabilitation expenses--approximately \$[] million--rather than \$[] million, which is

the amount required to bring the Limestone subdivision up to Class I condition. The full amount is what the State, as a likely subsidizer, deemed necessary, as stated in its TIGER application, which was based on estimates provided by MMA, to restore the Abandonment Lines to an appropriate level of utility. Accordingly, Mr. Finley appropriately included the entire amount of the estimated rehabilitation expenditure, as provided in 49 CFR 1152.32(m)(2)(ii). Finley Rebuttal VS at 5-6.

III. The End Of The Recession Will Not Change The Result

The opponents suggest that MMA's avoidable losses, and therefore the reason for the abandonment, will disappear with the end of the current recession. A corollary of this proposition is that MMA should adjust the carloads and revenue for the Base Year and the Forecast Year to take into account what the opponents term abnormally low business levels. While there is no doubt that the business activity of MMA's customers and, as a result, the business of MMA have been down as a result of the recession, it is equally clear that the recession has only accelerated the downward trend that has been present in the paper and forest products industries for quite some time.

In order to test and rebut the arguments of the opponents concerning the viability of the Abandonment Lines post-recession, MMA retained James N. Heller and John Schmitter to review the arguments of the opponents and the record and to analyze traffic and revenue levels, both historically and in the future, on the assumption that the Abandonment Lines continue to be operated by MMA. The results of their analysis are set forth in a report, which is attached as Exhibit C to the Rebuttal Verified Statement of James N. Heller and John Schmitter (the "Report").

The Report notes that approximately 80% of the carloads and two thirds of the revenue attributable to the Abandonment Lines is generated by wood products and paper. Report at 1. Carloads and revenue for wood products have a strong correlation with housing starts in the Northeast. Report at 2. Rail transportation of logs and wood chips, which comprise a substantial portion of the wood product business on the Abandonment Lines, produces very low, and even nonexistent, profit margins for MMA. Furthermore, the MMA market share and prices on this business are constrained, at least in large part, by source competition--the availability of such commodities from other locations--and modal competition from trucks. Report at 4. MMA could not expect any growth in its market share for the transportation of these commodities or any increase in prices or higher margins due to the existence of readily available, cost-effective alternatives. Report at 4-5.

The story line for lumber and oriented strand board is similar to logs and wood chips. The lumber business is closely related to housing starts in the Northeast. Report at 5. The testimony of Huber Engineered Woods and Louisiana-Pacific confirms the correlation of their business with housing starts and, more importantly, acknowledges that the recovery from the recession will be a long-term process, taking anywhere from 2 to 5 years to get back to pre-recession levels. Report at 5-6.

Overall, the Report projects that carloads and revenues for wood products on the Abandonment Lines may gradually increase between now and 2013 to eventually reach the 2008 levels of approximately [] carloads and \$[] million annually in revenue, but will remain well below the 2004-2005 level of [] carloads. It is anticipated that business levels will remain relatively flat from 2013 through 2015. The trend line for the

wood product business is expected to remain in lockstep with the trend line for housing starts in the Northeast. MMA could not increase its market share without “meaningful price reductions” (Report at 7), which would only worsen the financial results of operations.

The paper business handled by MMA on the Abandonment Lines consists of traffic to and from the Fraser Papers mill at Madawaska. Approximately 50% of the outbound paper traffic is moved by truck, and the other 50% of the outbound traffic and all of the inbound traffic is split between MMA and Canadian National. Grindrod Rebuttal VS at 11. The overall trend for paper shows a long-term decline, and Fraser itself confirms this trend. Report at 9-10. Prediction of the future of MMA’s business with Fraser, assuming no abandonment, is difficult as a result of Fraser’s practice of putting the rail business out for bid each year on a lane by lane basis. From year to year, any particular lane might change from MMA to Canadian National or vice versa. Even on the optimistic (and unrealistic) assumption that MMA would win all of the competitive bidding over the next 5 years, it is anticipated that the paper carloads and revenues would increase only very slowly between 2010 and 2015. Report at 11. The market would be driven by the demand for paper in North America and would be consistent with GDP in Maine. Shipments of inbound commodities used for the production of paper, such as clay and chemicals, are expected to mirror the projections for paper. Report at 15-16.

Looking at the overall picture, including both wood products and paper, Messrs. Heller and Schmitter predict that carloads would increase to approximately [] and revenue to approximately \$[] million on the Abandonment Lines in 2012. Report at

20. Carloads and revenues would remain relatively flat from 2012 through 2015, which would be consistent with the overall Maine economy and projections for housing starts and paper demand. Thus, the projected MMA carloads and revenues over the next 5 years would always fall well short of the peak years of 2005-2007, when MMA handled approximately [] carloads and generated \$[] million in revenue from business on the Abandonment Lines. Report at 20.

Obviously, a recovery from the recession will not solve the problems of trying to earn a profit from operations on the Abandonment Lines. If MMA were to continue to operate the Abandonment Lines over the next 5 years, the result would be continuing operating losses of the same order of magnitude that it has experienced over the last several years. Of course, the assumption of continued operations for 5 years is wholly theoretical, because current revenues and cash flow are not sufficient to keep the Abandonment Lines in the physical condition necessary for such continued operations for the next 5 years.

As stated by Messrs. Heller and Schmitter, the conclusions to be drawn from their analysis are that, absent an abandonment, (1) carloads and revenues of MMA on the Abandonment Lines have in the past followed, and would continue in the future to follow, the same trend as GDP in Maine, national paper demand and housing starts in the Northeast, (2) MMA does not have any realistic chance of increasing its market share or revenues on the Abandonment Lines, other than increases that are consistent with increases in GDP, paper demand and housing starts and (3) carloads and revenues may eventually reach but are unlikely to exceed pre-recession levels and, most importantly, are unlikely to sustain profitable operations on the Abandonment Lines. Rebuttal

Verified Statement of Heller and Schmitter at 2. Thus, the prospects for an improved picture of profitability for MMA on the Abandonment Lines are very dim, if not nonexistent.

The projections set forth in the Report are supported, not contradicted, by other parties. Huber and Louisiana-Pacific acknowledged that their business opportunities depend on a recovery in the housing market, which is expected to occur gradually over the next 2 to 5 years. Mr. Hunter, the State's consultant, predicts approximately [] additional carloads annually, over and above current levels, but only with the caveats that such increases depend upon "the recovery of the macroeconomic environment and new traffic opportunities" and investment by customers to "add infrastructure to accommodate more rail volume." Hunter VS at 3. In addition to these serious obstacles to realizing additional traffic, Mr. Hunter's projections must be viewed with skepticism or ignored completely for other reasons. For example, while Irving is now claiming that it could [] its traffic on the Abandonment Lines in 2010, Mr. Hunter has reported that Irving []. Furthermore, MMA personnel were not permitted to review the reports from Mr. Hunter's conversations with customers, and therefore MMA has been afforded no opportunity to confirm or refute the projections. Grindrod Rebuttal VS at 10; Rebuttal Verified Statement of Joseph R. McGonigle ("McGonigle Rebuttal VS") at 8.

Mr. Hunter has presented what he terms "operational analyses" that purportedly show that the Abandonment Lines "could be operated profitably by and as a stand-alone short line." Hunter VS at 24. While perhaps interesting, the analysis is not relevant to the criteria that the Board considers in evaluating an abandonment application.

Furthermore, the analysis is on its face unpersuasive. For example, Mr. Hunter has used an average of \$[] per car, based upon the MMA avoidable loss analysis, as the revenue that a short line would earn. The MMA revenue figures include, however, not only revenues attributable to the Abandonment Lines, but off branch revenues on the rest of the MMA system, which a short line would not earn.. A review of the pro forma income statements show that expenses, such as routine maintenance, are either omitted or understated. In short, the analysis, even if it were relevant, has no probative value.²

IV. Alternative Transportation Options Are Feasible and Economical

Several customers have advanced arguments as to why they will have inadequate alternative transportation options after the abandonment. As demonstrated below, however, none of these arguments is persuasive.

A. Irving Can Economically Use Trucks And Transloading

Irving contends that it would be harmed by an increase in transportation costs that it would incur after the abandonment. Based upon Irving's own data, however, Mr. Holland has determined that Irving would experience an increase of only []% in the delivered price per ton of its products if Irving used trucks instead of rail. Holland Rebuttal VS at 3-6. Such an increase should not, contrary to Irving's claims, result in the loss of business, and certainly not any loss of the magnitude claimed by Irving.

There are several additional reasons supporting the conclusion that Irving has adequate alternative transportation options and other means to protect its business even after the abandonment. All of the destinations for MMA rail service from the Irving

² If, on the other hand, the analysis is accurate, there should be broad interest in acquiring the Abandonment Lines pursuant to the Board's OFA procedures. Furthermore, acceptance of the analysis completely rebuts the argument by Irving, discussed below, that forced access over adjacent MMA lines should be granted as part of an OFA purchase.

Woodlands locations are within [] miles by public highway, which means that they are all in a range that is feasible and economical for trucking. Holland Rebuttal VS at 7. In addition, Irving has multiple locations at which it produces logs, and it is able, in most instances, to supply its customers from different sources if that is to Irving's advantage. Holland rebuttal VS at 8; McGonigle rebuttal VS at 2.

Furthermore, Irving already uses transloading to a great degree and could economically increase its transloading options. Holland Rebuttal VS at 7-8. For example, certain of its customers, such as [], do not have rail service direct to its facility, and therefore final delivery requires transloading to truck. Irving could transload from its private road network to trucks that are able to move on public highways, using the same equipment that it currently uses to transload from private road trucks to rail. The MMA rail line closely parallels and connects with public highways that could accommodate such transloading operations. Holland Rebuttal VS at 7-8. In addition, using the vast private road network, Irving could decide to extend the length of haul on the private roads, thereby taking further advantage of the much touted economies of the private roads.

Irving has claimed that a loss of rail transportation would result in the complete loss of [] customers and having to forego []% of the business of a [] customer. Irving has provided no data from which MMA might test these conclusions, but a review of the customers and destinations shows that Irving's claims are vastly overstated. Holland Rebuttal VS at 8.

First, as noted above, Mr. Holland's analysis shows that Irving's delivered cost would be only []% greater by truck, which would not appear to cause Irving to lose all of its business for certain customers. Servicing the customers from an alternate source is also an option for Irving. For example, the Irving "customer" in [

] could be supplied from Irving's forest lands in New Brunswick. Another customer, [], is directly served by rail by [], so transloading would appear to be a viable option. As mentioned above, [] already requires transloading. Finally, Irving's claim that it would lose []% of its business with [] is very curious, given the fact that MMA is not handling any rail business from Irving to []. Even if it were, Irving has alternative sources to supply []. Holland Rebuttal VS at 8.

Irving Woodlands' witness, Robert J. Pinette, claims that an increase in transportation costs of []% would result in the loss of \$[] million in revenue and [] jobs. An increase of []%, according to Mr. Pinette, would mean that Irving would lose \$[] million in revenue and that [] jobs would be lost. Pinette Verified Statement at 8. For the reasons outlined above, these claims are not credible. Furthermore, Irving offers no data or other information to support or explain the basis for these exaggerated claims, and, consequently, they should be ignored for purposes of analyzing the impact of an abandonment.

Perhaps more fundamentally, it should be recognized that Irving is a huge, vertically integrated enterprise that has significant market power and the ability to protect its ability to operate profitably. McGonigle Rebuttal VS at 1-3. Irving is both a shipper and receiver, and it has its own internal trucking capabilities. Significantly, from the

perspective of the transportation of wood products, Irving has multiple sources of logs which it uses on a regular basis, even with MMA rail service on the Abandonment Lines, to protect its profit margins. Far from being a “victim” with the loss of rail operations, Irving is fully capable of using alternative transportation, including its own trucks, and adjusting its markets in order to avoid any substantial adverse impact.

Irving's leverage and strength is illustrated by its approach to business during the current recession. Irving, unlike the other opponents, does not argue that recovery from the recession will be a panacea for customers and MMA. Rather, Irving states that in 2010 it could [] the volume of rail business it does on the Abandonment Lines if MMA's service were reliable, efficient and economical. Verified Statement of Robert J. Pinette at 11. If Irving is generating such a volume of business, it is either moving much of it currently by truck or holding products off the market until prices recover, or both. Whatever the answer, Irving clearly has the ability to compete, protect its profits and, more importantly, survive nicely without MMA rail service on the Abandonment Lines.

B. Trucks And Transloading Are Feasible For Louisiana-Pacific

Louisiana-Pacific describes itself as a national corporation with \$1 billion in annual sales. Louisiana-Pacific states that, after careful consideration, it selected its facility at Houlton for expansion and conversion in order to produce a new laminated lumber product. Louisiana-Pacific claims that its core market for its new product is the West Coast, which consumes []% of the production.

Currently, the Louisiana-Pacific plant at Houlton is operating at []% capacity. Louisiana-Pacific predicts, however, that with a gradual recovery in housing starts over the next 3 to 5 years, the Houlton facility will substantially increase its production and rail business. The Louisiana-Pacific timeline for a recovery in the housing market is less

optimistic than the projection of Messrs. Heller and Schmitter, as described above. More to the point, it is a timeframe that is well beyond the ability of MMA to survive.

Louisiana-Pacific contends that it cannot economically serve its customers on the West Coast if it does not have direct rail service. This contention is belied, however, by the fact that only [] to []% of its shipments currently move by rail and, more significantly, that Louisiana-Pacific in fact ships long distances by truck. Holland Rebuttal VS at 10-11. In 2009, for example, the average distance for truck shipments by Louisiana-Pacific was [] miles and in 2010 it has been [] miles. Holland Rebuttal VS at Exhibit 5. The longest distance shipped by truck in 2009 was [] miles. Holland Rebuttal VS at 10 and Exhibit REH-5. To a great extent, therefore, Louisiana-Pacific finds it economical to use trucks, even for long distances. This reliance on trucks could be facilitated by the fact that Louisiana-Pacific [

], and therefore such costs have only an indirect impact on Louisiana-Pacific's competitive posture. Holland Rebuttal VS at 10-11.

Louisiana-Pacific has made a substantial investment in its Houlton facility, which is over 3,000 miles away from its primary market on the West Coast. Louisiana-Pacific has argued that this investment and its relatively thin profit margins make it difficult to withstand any increases in transportation costs. The information provided by Louisiana-Pacific in discovery, however, contradicts this argument. The projected increase in transportation costs will be [] of the total costs of the Houlton facility and an [] portion of the return on investment that Louisiana-Pacific would expect on its \$140 million investment. Holland Rebuttal VS at 12 and Exhibit REH-6.

The conclusion that follows is that any increase in transportation costs will have an immaterial impact on Louisiana-Pacific and its ability to compete in its markets. Indeed, while Louisiana-Pacific speaks in general terms about the effect of the loss of rail service, it does not claim that there is a quantifiable cause and effect relationship between an abandonment and any loss of business.

C. Huber's Markets Can Be Served Adequately By Truck

Based upon an analysis of information provided by Huber, it will have adequate alternative transportation by truck after the abandonment. In 2009, only []% of Huber's transportation was moved by rail. Holland Rebuttal VS at 12. The balance moved by truck, which is not surprising given the fact that []% of Huber's deliveries were to customers located in []. Furthermore, approximately []% of the production by Huber in 2009 was [] at Huber's facility. Holland Rebuttal VS at 12-13. The conclusion to be drawn is that transportation costs are a very small part of Huber's overall cost structure.

In an effort to show that its business activities would increase, and that MMA's rail opportunities would increase correspondingly, Huber has relied on projections of housing starts. The projection shows that by 2013 it is anticipated that housing starts will be at approximately []% of the 2005 level, which is not surprising but hardly encouraging. At the same time, Huber is predicting that its share of the market will []. Holland Rebuttal VS at 13. Thus, it would require a perfect storm of sorts for Huber to reach, even by 2013, the projected traffic levels.

Huber, like Louisiana-Pacific, has made general statements alleging that the abandonment would have an adverse impact on its ability to compete. Huber has not,

however, attempted to quantify or estimate any specific loss of business that it claims would be attributable to the abandonment.

D. Fraser Has Made No Case On Alternative Transportation Options

Fraser Timbers has not made any attempt to argue that they will not have adequate alternative transportation options after the abandonment. The Fraser Timbers facilities at Ashland and Masardis are in bankruptcy and up for sale. The Ashland facility has been closed. Alternative transportation appears to be a low priority for the owners. In any event, for the reasons described for other lumber customers on the Abandonment Lines, trucks and transloading will provide an adequate alternative for whatever operations of Fraser Timbers may survive.

Fraser Papers is not located on the Abandonment Lines and will continue to have direct rail service after the abandonment. Fraser has not submitted any data or other information that would indicate that any increase in transportation costs could not be readily absorbed. The only arguments advanced are that the rail route via Canadian National is purportedly “too circuitous” and that dealing with cross-border issues is somehow burdensome. Neither of these arguments is persuasive.

Rather than “circuitous”, the Canadian National route is approximately the same length as the MMA route for a number of typical origin-destination pairs. Holland Rebuttal VS at Exhibit REH-4. Furthermore, if the Fraser contention that MMA’s service is slow is given any credence, Fraser should be delighted to use the Canadian National route more extensively. The purported cross-border issues are even more difficult to understand. Currently, both the MMA route and the Canadian National route require movement through Canada in order to connect origins and destinations in the United States. In fact, approximately []% of the Fraser traffic moving via Canadian

National through Canada originates or terminates in the United States. Grindrod Rebuttal VS at 11. Fraser is well acquainted with the procedures for cross-border rail transportation and successfully deals with them on a daily basis.

E. There Is Adequate Trucking Capacity Available

Several of the opponents, including Irving and the State, have contended that there will be insufficient trucking capacity available to handle the business that will be shifted to trucks after the abandonment. In order to evaluate this argument, MMA personnel communicated with a number of trucking companies that do business in Northern Maine. The conclusion to be drawn from information provided by these trucking companies is that there is and will be sufficient trucking capacity to handle business that converts from rail to truck after the abandonment. McGonigle Rebuttal VS at 6-7. To be sure, there has been certain turmoil and reduction in capacity during the current recession, but the consensus is that the equipment and personnel are available and will be able to respond to increases in demand, whether as a result of the recovery from the recession or more business as a result of the abandonment.

V. Net Liquidation Value Has Increased Due To Market Price Increases

The State has argued that MMA overestimated the value of the rail, ties and other track material in estimating NLV. After reviewing the State's points, MMA has agreed that certain downward adjustments are appropriate and that others are not. These adjustments are touched upon below and discussed in detail in the Rebuttal Verified Statement of Melody A. Sheahan ("Sheahan Rebuttal VS").

More significantly, there has been a substantial increase in the market value of rail and other track material since the time of the appraisal that was done for purposes of the application. Between November, 2009 and April, 2010, market prices increased

approximately []%. Sheahan Rebuttal VS at 2-3. The result, even after taking into account the downward adjustments suggested by the State, is that the NLV of the rail, ties and other track material has increased from \$[] million to approximately \$[] million, or an increase of approximately \$[] million. This increase is documented and supported by an expert in the market, Unitrac, which provided the market price information for both the November, 2009 appraisal, and the updated estimate. Exhibits A and B attached to the Sheahan Rebuttal VS show the detail of the inventory of rail, ties and other track material and the comparison of market prices between November and April.

It is appropriate for the Board to take into account the recent changes in the market price for rail and other track material. The Board has noted that valuation evidence that is contemporaneous with the Board's decision should be used, particularly when there has been a substantial change. *Oregon International Port of Coos Bay--Feeder Line Application--Coos Bay Line of the Central Oregon & Pac. Railroad, Inc.*, STB Finance Docket No. 35160 (STB served October 31, 2008), 2008 WL 4776916 at 8.

VI. MMA Accurately Projected Rehabilitation Costs

The State has taken issue with MMA's estimate of the rehabilitation expenses that are necessary in order to bring the Abandonment Lines to a state of good repair for efficient operations. Rather than the approximately \$[] million determined by MMA to be necessary, the State now suggests, without directly attacking the MMA estimate, that a capital expenditure of \$[] million would be adequate. Not only is the State off by a large order of magnitude, it is quite surprising that the State would take this position, given the fact that it applied for federal stimulus funds under the TIGER program in 2009 in an application in which it relied on MMA's estimate of \$[] million (not including

\$[] million for the Limestone subdivision) and stated that such capital expenditures were indeed necessary.

The basis for MMA's estimate of rehabilitation costs was set forth in detail in Ms. Sheahan's earlier Verified Statement. No party has attempted to refute the estimate, and it should be accepted by the Board.

Both the State and Irving have made arguments concerning the maintenance of way expenses estimated by MMA in the application and Ms. Sheahan's earlier Verified Statement. The arguments are based upon misunderstandings of the distinctions among deferred capital, which is sometimes referred to as deferred maintenance, normalized annual capital maintenance, which is necessary in order to keep lines at their current conditions, and basic, day-to-day operating expense maintenance, which is the bare minimum needed to operate in accordance with safety regulations of the Federal Railroad Administration. Sheahan Rebuttal VS at 7-11. As explained in detail by Ms. Sheahan, these expenses were accurately stated in the application and the avoidable cost analysis. Furthermore, there is no inconsistency in projected surfacing costs, as suggested by Irving.

VII. The Corridor Methodology Should Be Applied

In the application and, in particular, the Verified Statement of Richard M. Gottlieb, MMA explained why the corridor methodology for valuing real estate should be used in this case rather than the across the fence methodology. Both the State and Irving argue that the corridor method should not be used, relying on Board decisions indicating that a signed purchase and sale agreement or a definitive proposal would be necessary in order to deviate from the more commonly used across the fence approach. MMA

continues to believe, however, for the reasons outlined below, that this is an appropriate case to value the real estate in the abandoned right-of-way as corridors.

As the opponents of abandonment have noted, this is not an ordinary abandonment case. The length of the lines to be abandoned is greater than in most, if not all, recent abandonment cases before the Board. Furthermore, the extraordinary efforts by the State to keep the Abandonment Lines intact for continued rail operations is itself evidence of the importance of preserving the corridor. Indeed, the State has suggested that, in the event that the abandonment is granted, the Board should impose a public use condition, which by definition assumes nonrail uses of an intact corridor after abandonment. This is not, and it should not be treated as, a typical case involving a 5 mile line where customers and public authorities are indifferent as to whether the right-of-way is broken up by multiple sales to adjacent landowners.

There is a long history of acquisitions of abandoned rail corridors in Maine. As described by Mr. Gottlieb, in his earlier Verified Statement and in his Rebuttal Verified Statement, the State itself has been an active purchaser of abandoned rights-of-way for recreational purposes. Significantly, the State has acquired these rights-of-way by paying on the basis of corridor value appraisals, not across the fence appraisals. Rebuttal Verified Statement of Richard M. Gottlieb (“Gottlieb Rebuttal VS”) at 4-6. In addition, as described by Mr. Gottlieb, private purchasers have also acquired abandoned right-of-way over the years and continue to have an interest in purchasing the real estate in the Abandonment Lines as intact corridors. Gottlieb Rebuttal VS at 2-3. The Abandonment Lines have also drawn considerable interest from producers of electrical power in

northern Maine and Canada, which need corridors in order to build transmission lines to reach the consuming areas in the northeast. Gottlieb Rebuttal VS at 3.

While MMA is not able at this time to produce a signed purchase and sale agreement, MMA has demonstrated the existence of a high level of interest and demand for the Abandonment Lines for nonrail uses. If ever there were a case where the Board should decide that the use of a corridor approach is appropriate, this is it. Moreover, while the opponents have argued that the corridor approach should not be used, they have not challenged the results of the corridor appraisal, which indicates an NLV for real estate of approximately \$[] million.

VIII. The Alleged Service Issues Are Without Foundation

A recurring theme among the opponents is the notion that MMA has provided poor service and that with better service MMA would somehow be operating profitably on the Abandonment Lines. An examination of these arguments shows that they have no basis. Even if the arguments did have a shred of credibility, they would not provide a reason to deny the abandonment.

Over the last several years, MMA has reacted to the downturn in business levels by reducing the number of trains that it operates. The adjustment of the service has been a reasonable and prudent reaction--fewer carloads require fewer trains and fewer trains save money. Contrary to the impression that the opponents have tried to create, there were no service reductions preceding declines in business. Rather, service reductions followed the declines in business levels. Grindrod Rebuttal VS at 7-9.

Exhibit B attached to the Grindrod Rebuttal VS demonstrates the relationship between service changes and business levels. In 2007, notwithstanding a steadily eroding traffic base, MMA made no reductions and maintained service at 5 days a week on the

Abandonment Lines. In 2008, traffic levels continued to drop precipitously, and MMA adjusted its schedules by decreasing service from 5 days a week to 2 or 3 days a week. On several occasions, however, train frequency was increased in order to meet the projections of customers, notably Fraser Papers. As business continued to decline in 2009, additional service adjustments were necessary. In view of the fact that car loadings in 2009 were approximately 60% below those in 2007, these adjustments in service were entirely reasonable. The cause and effect was clear; declining carloads led to fewer trains, not the other way around. Grindrod Rebuttal VS at 8-9.

MMA recognizes that it is in a service business and, therefore, has been attentive to the needs of customers, communicating with them in a timely, open and constructive matter. Grindrod Rebuttal VS at 10. In order to monitor customer issues and facilitate communications, MMA has a daily report by which it records information concerning trains that may be late or canceled, connections that may have been missed, cars that may not have been handled in a timely fashion and “any customer complaints . . . and handling given”. Grindrod Rebuttal VS at 10 and Exhibit C.

IX. Abandonment Will Not Create A Stranded Segment

Irving argues that the proposed abandonment should be rejected “because it would permanently sever a 23-mile segment of the MMA from the national rail system,” thereby creating a stranded segment. Protest and Comments of Irving Woodlands LLC, Irving Forest Products, Inc., Fraser Papers Inc., Fraser Timber Limited, and Katahdin Paper Company LLC (“Irving Protest”) at 36. MMA’s response to this argument was fully briefed in its Reply in Opposition to “Motion to Reject or Dismiss Application,” filed by MMA with the Board on March 15, 2010, incorporated here by reference. Moreover, the Board has since concluded that the segment at issue would not, in fact,

constitute a stranded segment. See April 9, 2010 Decision, slip op. at 1 (noting the Board's conclusion "that the segment would not *per se* be stranded"). In that Decision, it was explained that "the sufficiency of the connection could be challenged when arguments are made on the merits of the application." Id. The question of the connection's sufficiency was fully briefed by MMA in its March 15 Reply in Opposition, in which MMA explained that it will fulfill all of its common carrier obligations on the segment in question, and further supported by the explanation in the Grindrod Rebuttal VS at 5-7 and 12. In contrast, Irving has offered nothing new on the merits of the issue, continuing to rely solely on conclusory statements.

X. There Is No Basis For Forced Access Over Other MMA Lines

Irving argues that if MMA's abandonment application is approved, "the Board should condition any [such] approval...on [the] granting of trackage rights to an OFA purchaser over the MMA." Irving Protest at 44. This argument must be rejected. As the Board's predecessor has explained, the relevant statutes do not permit the agency to impose trackage rights as part of an OFA transfer. *See, e.g., Chicago & North Western Transportation Co.--Abandonment Exemption--Mason City, IA*, ICC Docket No. AB-1 (Sub-No. 205X) (Nov. 20, 1987), 1987 LEXIS 48 at *14-15; *Illinois Central Gulf Railroad Co.--Abandonment--Between Tuscaloosa and Maplesville, AL*, ICC Docket No. AB-43 (Sub-No. 101) (Aug. 7, 1984), 1984 LEXIS 555 at *2-3. As the ICC stated in *Chicago & North Western*:

Our examination of 49 U.S.C. 10905 [now 49 U.S.C. 10904] leads us to conclude that we cannot authorize trackage rights as part of a section 10905 transfer. There is no language in 49 U.S.C. 10905 specifically dealing with trackage rights. By contrast, 49 U.S.C. 10910 [now 49 U.S.C. 10907, the feeder line development program statute] allows us, upon the offeror's request, to provide 'the

acquiring carrier trackage rights to allow a reasonable interchange with the selling carrier or to move power equipment or empty rolling stock between noncontiguous feeder lines operated by the acquiring carrier.’ 49 U.S.C. 10910(d). We must assume that if Congress wanted us to impose trackage rights in financial assistance proceedings it would have provided us with specific language like that found in 49 U.S.C. 10910.

Chicago & North Western, 1987 LEXIS 48 at *14-15 (quoting Conrail Abandonment of the Cairo Branch in Illinois, ICC Docket No. AB-167 (Sub-No. 56N) (ICC served Mar. 4, 1983) (not printed)). See also *Request for an Order Directing the Southern Pacific Transportation Company to Negotiate Trackage Rights with the Great Western Railway*, ICC Finance Docket No. 30872 (Oct. 15, 1986), 1986 LEXIS 110 at *4 (“Generally, we have no power to compel a railroad to grant trackage rights over its lines to another carrier.”). Moreover, even the one case Irving cites in support of its argument did not impose the sort of conditions sought by Irving here. See *Wisconsin Central Ltd.--Abandonment--In Ozaukee, Sheboygan, and Manitowoc Counties, WI*, STB Docket No. AB-303 (Sub-No. 27) (STB served Oct. 18, 2004). It is, therefore, clear that Irving’s request to impose the extraordinary and unprecedented remedy of forced access conditions on any offer of financial assistance must be denied.

XI. A Public Use Condition Cannot Be Imposed

The State wants the Board to impose a public use condition in the event that the abandonment is approved and “if the State determine[s] not to make an OFA, or [is] not successful in acquiring the Abandonment Lines under the OFA process.” Protest of State of Maine, Department of Transportation or, in the Alternative, Request for Public Use Condition at 15. The State seeks imposition of a public use condition so as to “preserve the status quo” because the State’s “primary purpose...is to preserve the Abandonment

Lines for restoration of rail service.” *Id.* A public use condition would be inappropriate in this case, because Board precedent does not allow a public use condition to be imposed for such purposes. *See, e.g., Boston & Maine Corp.--Abandonment--In Suffolk County, MA*, STB Docket No. AB-32 (Sub-No. 92) (STB served Dec. 21, 2001), slip op. at 7 n.13 (declining to impose a public use condition requiring the railroad to preserve tracks, ties, and signals for future rail service because such conditions are imposed for public purposes other than preservation of the line for future rail freight service, and explaining that if the public authority at issue wished to obtain the rail assets in an effort to continue rail service, “its proper recourse is to use the OFA procedures”).

XII. No Environmental Issues Warrant Disapproval Of The Application

The Board has already determined in these proceedings that an Environmental Assessment, rather than an Environmental Impact Statement, will be more than adequate to deal appropriately with the various environmental issues raised by the parties. MMA fully endorses the Board’s earlier decision. The Section of Environmental Analysis has issued a Draft Environmental Assessment. MMA believes that the draft has fully and completely addressed the issues raised thus far and has anticipated and comprehensively reviewed any other relevant issues that might be raised. As discussed below, there are only two issues--safety and the truck to rail car ratio--as to which MMA wishes to supplement the work of the Section of Environmental Analysis.

The State has advanced the argument, without the benefit of any citations or analysis of its own, that the abandonment would pose “serious safety concerns for roadway travel.” Hunter VS at 18. This notion has been thoroughly refuted in the Draft Environmental Assessment, but the conclusion is reinforced in the Rebuttal Verified Statement of Thomas N. Tardif (“Tardif Rebuttal VS”). Out of a total of 1,625 grade

crossing incidents reported to the Federal Railroad Administration in 2009, only 4 were in Maine and none involved a truck. Tardif Rebuttal VS at 2. After the abandonment, there will be only 2 main road grade crossings left in Aroostook County, and both of them will be on the Van Buren line. As described by Mr. Tardif, trucks will be able to travel to and from Aroostook County and avoid grade crossings by using available public highways.

The opposition is unanimous on the point that, in estimating the number of trucks that would be necessary to handle the business currently moved by rail, a ratio of trucks to rail cars of 4 to 1 should be used. MMA recognizes that the Board has on occasion used this 4 to 1 ratio, and the Draft Environmental Assessment uses a 4 to 1 ratio in order to be conservative in estimating the environmental impacts of additional trucks. In this case, however, the facts do not support a 4 to 1 ratio. Rather, an analysis of the commodities and types of equipment actually used shows that the overall ratio is 2.3 to 1. MMA's initial analysis on this issue is set forth in the Verified Statement of Robert E. Holland, and the accuracy of the analysis is confirmed in the Holland Rebuttal VS at 1-4.

The key to understanding the relationship between trucks and railcars is that the majority of the carloads in question are logs, woodchips and other wood products that move in relatively small railcars and in relatively large, high capacity trucks. Mr. Holland has carefully analyzed capacities and weights of the railcars and trucks used for these commodities, and the analysis irrefutably demonstrates that the ratio for these commodities is 1.6 to 1. Other commodities show the more traditional 4 to 1 or even greater ratio, but the overall average in this case is 2.3 to 1. None of the parties

advocating the use of a 4 to 1 ratio has offered any data or evidence that would contradict Mr. Holland's analysis or support the use of a 4 to 1 ratio in this case.

Mr. Hunter, on behalf of the State, discusses the impact of the abandonment on the condition of roads, fuel consumption and emissions. The Draft Environmental Assessment has tentatively concluded, even based upon the very conservative assumption that the truck to rail car ratio will be 4 to 1, that these impacts will be minimal. For the reasons described by Mr. Holland, the real ratio will be in the range of 2.3 to 1, which means that there will be far fewer trucks than assumed for purposes of the Draft Environmental Assessment and that the environmental impacts will be even less than minimal.

The Board should reaffirm its earlier decision that an Environmental Assessment is sufficient. Moreover, the tentative conclusion of the Draft Environmental Assessment, to the effect that there will be no significant environmental impact from the abandonment, should be adopted.

CONCLUSION

The record clearly shows that MMA is incurring substantial avoidable losses, has significant opportunity costs, and is facing monumental capital expenses to rehabilitate the Abandonment Lines. It is also clear that MMA's financial situation in this regard will continue to deteriorate. MMA has met its burden to justify the relief it has requested in these proceedings.

Opponents of the Abandonment argue that the business activities of rail customers served by the Abandonment Lines will rebound not only to pre-recession levels but above and beyond those levels. Most of the traffic on the Abandonment Lines involves wood products and paper, and the trend lines even before the economic downturn clearly

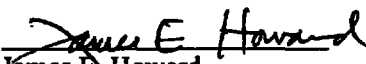
suggest that such a rebound for these commodities is unlikely. Even if such traffic projections were to materialize, MMA could not survive the 2 to 5 year timeline that the opponents themselves suggest would be needed.

The outcome in this case should be clear. The Board should grant MMA's application. MMA will continue to work with the State, and any other party wishing to make an offer to purchase, with a view toward preserving rail operations on the Abandonment Lines. If a purchase cannot be accomplished, however, MMA should be permitted to withdraw from operations on the Abandonment Lines and concentrate on preserving the service that it provides on other parts of its system.

Respectfully submitted,

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Dated: May 25, 2010

Certificate of Service

I hereby certify that I have served the foregoing Rebuttal Argument and the accompanying Rebuttal Verified Statements as of this 25th day of May, 2010 by causing copies to be sent to the parties of record in these proceedings either by overnight delivery service or by United States mail, postage prepaid.


James E. Howard

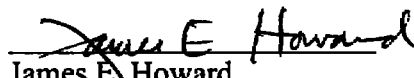
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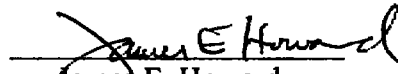

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James E. Howard

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB 1043 (Sub-No. 1)

MONTRÉAL, MAINE & ATLANTIC RAILWAY, LTD.--
DISCONTINUANCE OF SERVICE AND ABANDONMENT--
IN AROOSTOOK AND PENOBSCOT COUNTIES, MAINE

REBUTTAL VERIFIED STATEMENT OF ROBERT C. GRINDROD

My name is Robert C. Grindrod, and I am the President and Chief Executive Officer of Montréal, Maine & Atlantic Railway, Ltd. ("MMA"). I submitted a Verified Statement earlier in this proceeding with the application of MMA to abandon approximately 233 miles of line in Penobscot and Aroostook Counties, Maine. The purpose of this Rebuttal Verified Statement is to respond to certain portions of the comments and verified statements filed jointly by Irving Woodlands, Irving Forest Products, Fraser Papers and Fraser Timbers, which I will refer to as "Irving", and the State of Maine (the "State").

Current Developments

Since the filing of the application, there has been only slight improvement in the carloads and revenues on the Abandonment Lines. Furthermore, the financial results of MMA for the first quarter of 2010 show the same pattern of losses that we have been experiencing for the last several years. Losses from operations in the first quarter of 2010 are \$1,275,630, which would put MMA on a projected path for an annual operating loss of approximately \$5,000,000. MMA cannot continue to sustain such losses, and the

current situation is imperiling MMA's ability to continue to provide service not only on the Abandonment Lines, but additionally on the remainder of its and, as such, constitutes a burden on interstate commerce. In short, there is no light at the end of the tunnel.

These recent financial results have led to the continuation of another serious problem--the lack of cash flow to perform urgently needed maintenance and capital replacement work on the entire MMA system. As described in the Rebuttal Verified Statement of Melody A. Sheahan, the condition of the lines proposed for abandonment continues to deteriorate. Without funding for necessary capital expenditures, slow orders will continue to increase, transit times will be longer, operating expenses will escalate and, more significantly, safe operations will become more difficult to maintain. As a practical matter, service could come to a halt as a result of embargoes, whether or not the proposed abandonment takes effect.

Avoidable Loss Analysis

The State and Irving have raised various arguments concerning the avoidable loss analysis done under the supervision of Robert C. Finley and described in his Verified Statement. For the reasons discussed below, these arguments are not persuasive, and the avoidable loss estimated by Mr. Finley accurately demonstrates the results of operation of the Abandonment Lines.

In the Verified Statement of Gary Hunter ("Hunter VS") on behalf of the State, he argues that MMA has assigned too many mechanical employees--12-- to the Abandonment Lines and, as a consequence, that MMA has overstated the number of mechanical employees that will be excess after the abandonment. Mr. Hunter contends that only 5 mechanical employees would be required. Based upon my knowledge of the

MMA system as a whole and the operations on the Abandonment Lines, I disagree. After the Abandonment, the mechanical facilities currently maintained at Millinocket, just south of the Abandonment Lines, will be closed, thereby eliminating one manager and 7 mechanical employees. The personnel at Millinocket maintain both locomotives and freight cars that are used on the Abandonment Lines. In addition, the Abandonment will permit the reduction of 5 additional employees who are currently working at Derby, due to the reduced total number of locomotives in the active fleet as outlined below.

MMA estimated that the Abandonment would lead to the reduction of 12 locomotive units from its current fleet. Mr. Hunter opines that only 6 locomotive units are required to provide service on the Abandonment lines. While it may be theoretically possible to operate the trains currently scheduled on the Abandonment Lines with only 6 locomotives, it is not possible to move traffic to and from the Abandonment Lines and across the rest of the MMA system or to provide a necessary reserve for emergencies or scheduled maintenance, without an additional 6 locomotives. As a result of the reduced volume of traffic after the abandonment, the 6 additional locomotives will not be required for handling trains, for example, between Millinocket and Montréal or on the MMA lines south of Millinocket.

MMA has 760 freight cars assigned to handle traffic that originates or terminates or moves overhead on the Abandonment Lines. All of these cars are leased, and all of them were acquired on the basis of prudent planning in order to handle anticipated traffic levels on the Abandonment Lines. In the past, the levels of car loadings have been substantially higher than in the Base Year, in some cases by as much as 60%, and during the period of higher traffic levels it was the responsibility of MMA to provide freight cars

to handle the higher volume of shipments. During such periods, all 760 cars were fully utilized. As a consequence of the drop in traffic over the last few years and, more recently, with the recession, MMA is left with a portion of the 760 cars that it is not necessary for current business levels on the Abandonment Lines. All 760 of the cars will be unnecessary for MMA's operations after the abandonment.

It is normal and customary in the leasing of equipment to have an obligation as a Lessee to make lease payments for the full term of the lease. The consequences of not making the payments, and thus having a default under the lease terms, are severe and extremely costly from an economic point of view. The sub-lease of the equipment to other parties was considered and found not to be a viable option, in part because the recession caused a nationwide glut of cars, particularly of the types under lease to MMA.

None of the leases covering the 760 cars expired during the Base Year,. In the Forecast Year, the leases on 354 cars, with rental payments of \$[], will end. Other lease payments for the remaining 406 cars will continue throughout the Forecast Year.

In addition, Mr. Hunter has provided a table of MMA leases (Hunter VS 11) which is difficult to understand, because there is inadequate explanation concerning his assumptions and calculations. To the extent that it is understandable,-it is incorrect, and overstates the cars under lease by 150 cars. There appear to have been multiple misreadings of the lease documents provided , which has led to the inaccuracies in the table which he offered as justification to support his argument.

It is my belief and firm conviction that MMA took a prudent course in arranging leases to provide equipment for its customers. The fact that a portion of the 760 cars is not in use currently does not mean that they were not costs properly attributable to

operations of the Abandonment Lines. Accordingly, I firmly believe that these are legitimate costs of the Abandonment Lines.

The State contends that the use by Mr. Finley of the railroad cost of capital determined by the Board was inappropriate and that he should have used instead the interest rate on MMA's loan with the Federal Railroad Administration. As stated in Mr. Finley's Rebuttal Verified Statement, he used the Board's cost of capital, as required by the regulations, because the calculation of MMA's cost of capital was not reasonably possible and would not be representative due to MMA's corporate and financial structure. MMA is wholly owned by Montréal, Maine & Atlantic Corp., which also holds all of the stock of the entity that owns the rail assets of the system in Canada. In addition, LMS is a separate, but affiliated company. The financial statements for all of these affiliated companies are done on a consolidated basis. Several of the companies in the corporate family, (the parent corporation, MMA and LMS) have issued debt. Given this corporate structure, it would be very difficult, if not impossible, to determine the cost of equity and debt separately for MMA alone.

Irving bases its criticism of the avoidable loss analysis on the Verified Statement of Thomas D. Crowley ("Crowley VS"). Most of the arguments made by Mr. Crowley are addressed in the Rebuttal Verified Statement of Robert C. Finley. In addition to those arguments, however, Mr. Crowley also contends that MMA will incur new expenses after the abandonment in order to operate the line that MMA will retain between Madawaska and Van Buren (the "Van Buren Line") and that those expenses should somehow be used to reduce the amount of the avoidable loss. Even if such an offset were permitted, which is a proposition with which we disagree, as explained by Mr. Finley, the amounts

calculated by Mr. Crowley, as shown below, are substantially greater than the actual costs will be.

Mr. Crowley indicates that the mechanical facility that MMA would construct after the abandonment on the Van Buren Line would cost approximately \$5.12 million. This estimate is not substantiated with any detail, and it is apparently based upon the plans of a short line operating in Washington. Whatever those plans in that situation, MMA intends to construct a very basic maintenance shed for a cost not to exceed \$[]. The facility will be adequate to handle basic maintenance and inspections for locomotives and freight cars used on the Van Buren Line.

After the abandonment, MMA plans to perform heavy maintenance on locomotives used on the Van Buren Line in its system shop at Derby, Maine. The locomotives would be moved via the Canadian National line to the interchange with MMA near Montréal and from there to Derby. Mr. Crowley estimates that the transportation charges would be approximately \$28,000 annually. As shown below, this is grossly exaggerated.

Each of the 2 locomotives that would be used on the Van Buren Line would be moved for heavy maintenance once every 5 years, not annually. These locomotives would be operating at very low mileages on the 25 mile long Van Buren Line, and therefore would be incurring very little wear and tear. If each locomotive made the 50 mile round trip 6 days a week, it would be 5 years before they reached 39,000 miles, which would still be a point far below which it would be necessary to perform heavy maintenance. MMA has obtained a quote from Canadian National, a copy of which is attached as Exhibit A, to move the locomotives. The price would be \$[] per

locomotives in each direction, which means that the annualized cost, assuming a round-trip every 5 years, would be \$2,842.

Mr. Crowley estimates that the work force that would be necessary at the \$5 million mechanical facility that he postulates on the Van Buren Line after abandonment would consist of one manager and four mechanics at an annual cost of \$298,187. Again, Mr. Crowley has substantially overestimated the needs. MMA would operate the facility with 2 employees, who would be more than enough to perform maintenance on the locomotives and cars as needed. If additional assistance were required, personnel from the Derby shops could be available within a matter of hours. Ironically, the 5 employees that Mr. Crowley considers necessary for the Van Buren mechanical facility are the same number of mechanical employees that Mr. Hunter deems necessary for the operation of the entire 233 miles of the Abandonment Lines.

Mr. Crowley also points out a mathematical error in the calculation of fuel costs in the Forecast Year by using \$2.18 per gallon, rather than the price of \$2.11 per gallon, as estimated in the MMA budget for 2010. In fact, MMA's fuel costs in the first quarter of 2010 have averaged \$2.36 a gallon, rather than the \$2.11 anticipated earlier. The cost of fuel has increased, not decreased.

Service Issues

Several parties have argued or, more accurately, complained that MMA's service has been less than optimal and that customers would ship more by rail if the service were better. For the most part, these complaints seem to focus upon the reductions in the frequency of service that were reasonable and necessary responses dictated by decreases in the level of business. The analysis attached as Exhibit B shows for each of the years

2007 through 2009 and in summary form the specific declines in car loadings that led to various changes in the frequency of service and the corresponding monthly net operating loss during the same period. As demonstrated in the exhibit, the service changes followed, and did not precede, declines in business.

Despite a rapidly eroding traffic base in 2007, there were no changes in train service. During 2007, service was provided on each of the subdivisions that are part of the Abandonment Lines on a 5 day a week basis.

As a result of the continuing erosion of the traffic in the first 5 months of 2008 (down as much as 30% as compared to the same month in the previous year), and MMA losses totaling \$[] million in the same period, we had no alternative but to reduce service in order to save costs. As shown in detail in Exhibit C, service in most situations was decreased from 5 days a week to 2 or 3 days a week. With respect to the Fraser Paper business, however, service frequency was increased on several occasions during 2008 based upon traffic projections provided by Fraser, which generally proved unreliable. In addition, the service between Squa Pan and Portage was increased from 3 trips per week to 4 in order to accommodate a new movement of woodchips. In 2008, carloads on the Abandonment Lines were 27% less than they were in 2007.

Traffic continued to decline further in 2009, and further service cuts were necessary. For example, service on the Houlton subdivision was reduced to one trip per week, but Louisiana-Pacific, the major customer on the line, was virtually closed at that time. In early 2009, car loadings were approximately 60% below those of 2007 on a month-to-month comparison basis. Even though MMA's entire work force had taken a 15% salary reduction effective as of March 1, 2009, MMA lost \$[] million from

January through May, 2009. During this period, additional train service adjustments were made on the Madawaska subdivision in response to decreased production by Fraser papers, including extensive periods of time during which paper machines were shut down.

Irving Woodlands, through the statement of Robert J. Pinette, has claimed that MMA has "chronic problems", such as a lack of equipment and manpower. These charges are without basis. First, as Mr. Pinette notes, Irving Woodlands owns or controls virtually all of the railcars that it uses. At the moment, there are in excess of 200 idle Irving railcars stored on MMA lines. Second, MMA has assigned locomotives to service the Abandonment Lines based upon traffic volumes. If volumes are expected to increase, even on a day by day basis, additional locomotives would be provided. Third, MMA would love to have the ability to fund rehabilitation to increase track speeds, but that is not feasible due to the heavy losses incurred in operating the Abandonment Lines. In any event, Mr. Pinette's criticism is fundamentally inconsistent with the position of the State, which believes that current track speeds are adequate. Fourth, the claim of a lack of manpower is too vague to frame a response. Suffice it to say that MMA has sufficient employees to handle its business, but does not have sufficient business to warrant the assignment of any more manpower than is currently assigned

Irving Woodlands also asserts that cars are sometimes delayed for several days at MMA locations for a variety of reasons. To the extent that there are delays, which are rarely longer than a day or two, they are often caused by Woodlands itself, which tends to provide cars for movement in large numbers at the same time on a highly inconsistent basis. In addition, Irving contributes to delay by frequently loading cars with logs and

branches protruding from the sides of the cars, thereby requiring proper trimming before the cars can be safely accepted and moved by MMA.

The parties have also contended that communications with MMA have not been ideal and that MMA has not been attentive to the needs of customers. These contentions are unfounded. MMA has endeavored to communicate in a timely, open and constructive manner with its customers in order to address their concerns. In order to monitor issues raised by customers and to facilitate communications, MMA uses a daily report that is prepared by the Vice President-Transportation, examples of which are attached hereto as Exhibit D. As shown in the daily reports, MMA keeps track of trains that are more than 2 hours late, trains that have been canceled, connections that may have been missed, cars that may have been left behind at a customer's siding, any backlog of cars due to problems with connecting rail carriers and, significantly, "any customer complaints made to the [customer service center] or other parties and handling given". These reports generally show good car movement, stable operating conditions, and a lack of customer complaints.

The State, through Mr. Hunter, has asserted that his interviews with customers demonstrates that "MMA . . . has shown a lack of interest in serving the shippers." Hunter VS at 4. Regrettably, the State would not permit me or any other MMA personnel to review the specific reports, so I have no ability to understand, much less respond to, any specific comment by any customer. Suffice it to say, however, that, as we have said over and over, MMA has diligently sought to increase the rail business and maintain the service on the Abandonment Lines and that seeking abandonment was a last resort that

has been driven by the substantial losses suffered from operating these lines, not by any lack of interest in serving customers and trying to operate profitably.

Fraser Papers

Fraser Papers and its witness, Brian Sass, have made several allegations that warrant a response. Fraser complains that an abandonment would mean that approximately 50% of the traffic to and from the paper mill would have to go through Canada. First, approximately 50% of the existing traffic moves by truck, and the remaining 50% is currently split roughly between the MMA route and the Canadian National route. Both the MMA route and the Canadian National route go through Canada. The Fraser traffic currently handled by MMA moves on the MMA line into Canada and through the Montréal area, where it is interchanged between MMA and Canadian Pacific or Canadian National, which move the traffic to or from origins or destinations in the United States. Furthermore, as shown in the Rebuttal Verified Statement of Robert E. Holland, the Canadian National route is not circuitous compared to the MMA route, as alleged by Mr. Sass. As a Canadian company, one would have thought that Fraser would be very comfortable with its rail traffic moving through Canada.

The movement of traffic through Canada to points in the US is a reasonably simple matter. As a point of US origin, Fraser provides certain basic information to Customs. Any car destined to a point in the US is placed on a "Transit Manifest" and moved through Canada and back to the US with no further customs effort. The services of a customs broker are not required. During the period 2008 through the end of April, 2010, Fraser shipped a total of [] carloads. Of this number, [] moved via the

CN route through Canada. Of these [] cars, only [] ([]%) terminated at points in Canada. Thus, it is clear that the fear of movement through Canada and border crossing complications is unfounded, since []% of the cars shipped via CN in this period were destined to points in the United States. It bears repetition that Fraser is not located on the Abandonment Lines and will not lose rail services upon abandonment.

An irony concerning Fraser's opposition to the abandonment is that the haulage arrangement that was put in place during the time of the Bangor & Aroostook ownership is a significant contributing cause of the avoidable losses on the Abandonment Lines. The effect of giving Canadian National the ability to quote rates directly to Fraser at Madawaska was to reduce the volume of traffic moving over the MMA route that uses the Abandonment Lines and to reduce MMA's revenues for the traffic it does handle..

Other

The Rebuttal Verified Statement of Joseph R. McGonigle describes the integrated operations and market power of the Irving companies. An example of which I have personal knowledge relates to the attempt by [] to use MMA for the movement of logs from Irving's facility in St. Leonard, New Brunswick to []'s plant in [], Maine. I was told by [] that it requested Irving to provide a rate for the purchase of the logs with delivery by rail, but Irving refused to do so. Instead, Irving insisted that the transportation had to be by means of Irving trucks. On further investigation with [], I found that the delivered price paid by [] for the logs was []% higher than would have been the case if the logs had moved by rail on established rates. This clearly demonstrates that movement by rail is not always

available to the customers on the line, but through no fault, action or inaction on the part of MMA.

I firmly believe that the operation of the Abandonment Lines at present or likely future traffic and revenue levels will produce continuing losses. This fact, when coupled with the substantial track rehabilitation costs and opportunity costs, constitutes an undue and excessive burden on interstate commerce.

VERIFICATION

State of Maine

ss:

County of Penobscot

I, Robert C. Grindrod, being duly sworn, depose and state that I am President and Chief Executive Officer of Montréal, Maine & Atlantic Railway, Ltd. ("MMA"), that I am authorized to sign the foregoing Rebuttal Verified Statement on behalf of MMA, that I have examined all of the statements contained in the Rebuttal Verified Statement and that all such statements are true and correct to the best of my knowledge and belief.

Robert C. Grindrod

Subscribed and sworn to
before me this __ day of
May, 2010

Notary Public

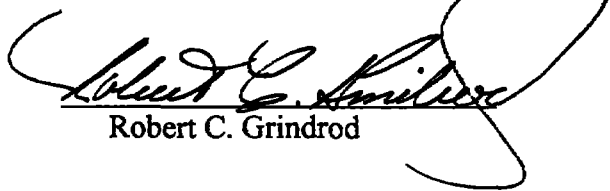
VERIFICATION

State of Maine

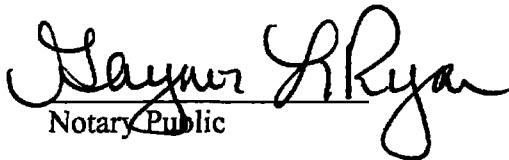
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Robert C. Grindrod

Subscribed and sworn to
before me this 21st day of
May, 2010


Notary Public

GAYNOR L. RYAN
Notary Public, Maine
My Commission Expires May 4, 2015

Grindrod, Robert C.

From: DOUG.COLEMAN@CN.CA
Sent: Monday, May 03, 2010 5:30 PM
To: Grindrod, Robert C.
Cc: PAUL.MILLER@CN.CA
Subject: Fw: Detour Movement

Mr Grindrod;

CN rate to move a locomotive on own wheels from St Leonard NB to St Jean PQ would be \$3,553 USD per unit, and subject to the following conditions;

- * Rate EXCLUDES all shortline haulage fees.
- * NO LIABILITY while on CN lines.
- * Subject to FUEL SURCHARGE 7403
- * Subject to mechanical inspection and special trains
- * Subject to CN Marshalling rules
- * Subject to CN 9000
- * Subject to publication prior to shipment.

Please note that units would need to be inspected by CN Mechanical prior to acceptance on our line. Also, please note that the rate quoted is based on moving units in regular freight service. If the Mechanical inspection identifies handling restrictions, the rate would be subject to review.

Regards,

Doug Coleman
Pricing Analyst
CN - Marketing - Metals & Minerals
Phone: (514) 399-5633
Fax: (514) 399-8800
email: doug.coleman@cn.ca

REDACTED

REDACTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB 1043 (Sub-No. 1)

MONTRÉAL, MAINE & ATLANTIC RAILWAY, LTD.--
DISCONTINUANCE OF SERVICE AND ABANDONMENT--
IN AROOSTOOK AND PENOBSCOT COUNTIES, MAINE

REBUTTAL VERIFIED STATEMENT OF JOSEPH R. MCGONIGLE

My name is Joseph R. McGonigle, and I am Vice President-Sales & Marketing of Montréal, Maine & Atlantic Railway, Ltd. ("MMA"). I submitted a Verified Statement on February 25, 2010 with the application of MMA to abandon 233 miles of line in Penobscot and Aroostook Counties, Maine. The purpose of this Rebuttal Verified Statement is to respond to certain arguments and testimony submitted by the parties in response to the application. In particular, I will respond to portions of the joint submission by Irving Woodlands, Irving Forest Products, Fraser Papers and Fraser Timbers and to the opposition filed by the State of Maine (the "State").

Irving

The arguments presented by Irving can be understood only in a broader context. Irving has attempted to portray itself as a rail customer that has suffered as a result of MMA's allegedly poor service and that would be severely harmed if the abandonment application were granted. As explained below, nothing could be farther from the truth. Irving and its affiliates comprise a huge, multinational conglomerate that seeks to, and does in many cases, control the markets in which it competes. The extent and breadth of

the operations and integration is readily apparent on review of the official website for J.D. Irving, Ltd., the overall parent company. Far from being a victim, Irving generally has superior market power compared to MMA and exercises such power to its advantage.

Irving operates in Maine, Québec, New Brunswick in several other Canadian provinces. As described by Irving itself, it owns or controls 1.25+ million acres of forest land in Maine alone. Irving also has extensive forest lands in Québec and New Brunswick. The components of the Irving group of integrated companies include Irving Woodlands, which owns forest lands and harvests logs in Maine, and Irving Forest Products, which operates primarily in New Brunswick and which converts logs into lumber and other wood products. Irving Forest Products is a customer of Irving Woodlands. In addition, the Irving family of companies includes transportation companies, consisting of ocean shipping, trucking, pipelines and rail transportation. The trucking companies include RST Industries, Midland Group and Sunbury Transport. The rail affiliate is New Brunswick Southern, which includes Eastern Maine Railway. New Brunswick Southern interchanges with MMA at Brownville Junction, and its lines extend from there to St. John, New Brunswick and St. Stephen, New Brunswick. New Brunswick Southern also interchanges with the Pan Am system at Mattawamkeag, Maine and the Canadian National system at St. John, New Brunswick.

My experience in dealing with Irving and observing its business practices leads me to conclude that it is a vertically integrated operation and, not surprisingly, operates with the goal of keeping all profits wholly within the organization to the maximum extent possible. For example, Irving sells products to outside interests only to the extent that they cannot handle the business, and realize profits, internally. Irving also maximizes the

use of its own transportation resources before using outside services, such as MMA. As described in the Rebuttal Verified Statement of Robert C. Grindrod, a recent example of Irving's approach involves a request by [] to Irving for a quote to move logs from Irving's facility at St. Leonard, New Brunswick to [] in [], Maine, which would have been a single line haul for MMA. Irving refused to provide a rail option and, instead, quoted [] a truck option only. When MMA was apprised of the situation, [] investigated with Irving and learned that the total landed costs via truck was approximately []% higher than the alternative option of MMA rail service. Irving was using its trucks to haul wood from [] and back hauling with the same trucks to [], thereby protecting its own costs and profits at the expense of [] and MMA.

The relationship between Irving Woodlands and Irving Forest Products, on the one hand, and New Brunswick Southern provides another example of Irving's integration and ability to exert market leverage. MMA has confidential Rule 11 rates that are used for Irving rail movements from Maine origins to the interchange with New Brunswick Southern at Brownville Junction, and New Brunswick Southern sets its own rates with Irving for movement beyond Brownville Junction. Theoretically, therefore, New Brunswick Southern does not and should not know the rates set by MMA and Irving for such traffic. In a conversation with a high ranking official of New Brunswick Southern, however, he made it clear that he was aware of the MMA confidential rates.

Irving Woodlands claims that it operates at four rail sidings on the Abandonment Lines and that it has made substantial investments in the equipment at these locations. This sweeping statement does not withstand scrutiny. The facility at Skerry is the only

facility wholly owned by Irving. Irving formerly had a lumber mill at Skerry, but the mill was closed in 2008 as the result of the down economy and is no longer a rail customer. The sidings and real estate at Fort Kent and St. Croix are owned, maintained and operated by MMA as transload sites, and the real estate at Oakfield is also owned by MMA. At these latter 3 locations, Irving brings in equipment for transloading as required, which leads to the conclusion that such equipment can be readily transferred and used at other locations. Oakfield has rarely been used, and there is no agreement between Irving and MMA for the operations there. In addition to these rail sidings, Irving has various locations along the private road network where they have the ability to transfer logs from their unregulated, 225,000 pound plus vehicles to trucks that can operate over public highways.

The operations and transportation logistics at the Irving Forest Products facility at St. Leonard, New Brunswick provide another example of Irving's integrated operations and extensive use of trucks and transloading. Irving Woodlands ships logs by rail and truck from Maine to Irving Forest Products at St. Leonard, where the logs are converted into lumber or other products. A portion of the lumber products are shipped by truck from St. Leonard to the MMA reload facility at Van Buren, where it is transloaded to rail and then moved to various destinations. Irving could eliminate the transloading operations, and additional cost, at Van Buren, but it has not permitted MMA to quote rail rates on lumber shipments directly from St. Leonard, even though Canadian inter-switching regulations would permit MMA to have direct access to the St. Leonard facility. While Irving's motivations and reasons for these transportation arrangements are not clear, what is clear is that Irving can and does make extensive use of trucks and

transloading already and could presumably undertake additional trucking and transloading economically after the abandonment.

All of Irving Woodlands' rail traffic consists of short movements that are conducive to movement by truck. In fact, all of the current rail business handled by MMA for Irving Woodlands involves destinations that are less than [] miles by highway. As discussed by Robert E. Holland in his Verified Statement and his Rebuttal Verified Statement, movements of this distance are susceptible to competition from trucks.

The economics of the log and woodchip business that comprises the vast preponderance of MMA's business for Irving also lead to the conclusion that trucks are a viable option. Historically and to this day, logs and wood chips have been very low margin commodities for railroads in general and for MMA in particular. It is my understanding that Bangor & Aroostook Railroad established below market rates for Irving in the late 1990s in order to induce rail shipments at the time Irving had acquired forest lands from Great Northern Paper. Until last year, these rates had never been adjusted upward, and we recognized that they were well below the market for other log and chip customers and even below long-term variable costs. While such a situation might be tolerable if higher margin traffic had remained at high levels, the situation became unacceptable for MMA given the loss producing operations on the Abandonment Lines. Consequently, we raised Irving's rates last year to provide competitive balance with the overall market although not to the extent of the []% increase alleged by Irving. At the time, Irving Woodlands business levels had declined []% from the prior year. I

believe that the rates cannot be increased any further without the risk of losing such business to trucks or resulting in Irving keeping products off the market.

Irving claims that the only purpose served by the private road network is to enable Irving to reach MMA rail sidings. In a sense, Irving seems to view the Abandonment Lines as a mere extension of Irving's transportation system. In any event, Irving does not accurately portray the private road system, which was built initially to connect the paper and lumber mills with the log harvesting areas. As noted above, the private roads intersect public roads at many locations in Aroostook County. Private road access to Van Buren is used extensively for forwarding logs to St. Leonard. The Ashland and Masardis lumber mills of Fraser Timbers receive logs exclusively by truck using both public and private roads. The conclusion is that the private road system is vast and far more adaptable to use by Irving after the abandonment than Irving admits.

Irving argues that there is insufficient trucking capacity in Aroostook County to replace rail after the abandonment. Putting aside for the moment the irony of Irving, which has its own in-house trucking capabilities, making this argument, the facts are that there is adequate trucking capacity to handle business that is currently moving by rail.

In order to test Irving's argument, I had members of the MMA sales and marketing department contact a number of truckers that operate in Aroostook County in order to determine their capacity and ability to handle additional business. Among the companies contacted were J.D. Raymond, TNT, Therriault, Sunbury (an Irving affiliate), Kevlaur, O.M. Scott, Pottles, Hartt Transportation and Dysart. It seems clear that the recent economy has caused certain turnover and reduction in capacity, but it is equally clear that there is more than enough equipment and operators to respond to increases in

business. Even during the last year or so, there has been more than an adequate supply of equipment for the movement of wood chips. Many of the haulers of logs tend to have 5 or fewer trucks, but the capacity is there if business levels increase. An interesting report indicated that Irving Woodlands has sold a number of their log trucks to independent contractors who will continue to provide service to Irving. The bottom line is that the trucking industry in Northern Maine is flexible, responsive and ready, willing and able to provide service if there is additional business generated by an abandonment.

Mr. Pinette of Irving Woodlands claims that if MMA provided better service Irving would increase the carloads that it would tender for rail shipment. In fact, Irving has many of its rail cars stored and inactive on MMA's lines, indicating that Irving is either withholding logs and wood chips from the market or transporting them by truck. As mentioned above, in June 2009 Irving Woodlands rail traffic levels via MMA had declined []% year over year. The conclusion is that the higher truck costs about which Irving complains apparently do not prevent the use of trucks on an extensive basis. The further conclusion is that Irving must find truck transportation to be both feasible and cost-effective.

Fraser

Fraser Papers, Fraser Timbers and Katahdin Paper Co. also oppose the abandonment, but, as described below, their situations and arguments are different from Irving. Significantly, none of them even attempts to argue that higher transportation costs after the abandonment would be burdensome or have an adverse impact on their operations or profitability.

Fraser Papers' paper mill in Madawaska is not on the Abandonment Lines and will continue to have rail service via Canadian National after the abandonment. Fraser Papers argues that the Canadian National line is "too circuitous", which is simply not true. As shown in Exhibit REH-4 of Mr. Holland's Rebuttal Verified Statement, the Canadian National route is only slightly longer than the MMA route for a number of representative origin/destination pairs. Also contrary to Fraser's allegations, both the Canadian National and MMA traverse Canada to reach U. S. markets. Only 5 of 8 machines at the mill remain in operation, and their transition from a heavy emphasis on publication papers to a heavy emphasis on specialty papers, has, by their own published reports, lead them to use more trucking due to the smaller orders sizes and short delivery windows.

Fraser Timbers is in bankruptcy and has lumber mills located on the Abandonment Lines at Ashland and Masardis. The mill at Ashland has been closed for many months, and both of the mills are for sale. In their bankruptcy reorganization, Fraser Timbers has retained and apparently is not selling two lumber mills in New Brunswick--at Plaster Rock and Juniper--neither of which is served by rail.

Katahdin has two paper mills, one at Millinocket and the other at East Millinocket, neither of which is located on the Abandonment Lines. The Millinocket facility has been shut down and has not been operating since the third quarter of 2008, and there is no prediction as to whether or when it will reopen. The East Millinocket mill has direct rail service by MMA, and will continue to have such service after the abandonment. In any event, neither mill originates or terminates any traffic that moves over the Abandonment Lines.

State

The State, through its consultant, Gary Hunter, has criticized MMA's efforts to develop additional business on the Abandonment Lines, claiming that MMA has no marketing plan and that it "lacks interest" in the customers. I understand that Mr. Hunter met briefly with a number of customers, and he may have reviewed data concerning historic traffic levels and projections, but his knowledge of these customers and the rail market in Maine is limited to such experience. Furthermore, he never met with me or any other MMA marketing personnel, and neither I nor any other MMA employees have been permitted to review the summaries of Mr. Hunter's interviews. As explained below, however, Mr. Hunter is not correct in his assessment of MMA's marketing plans and efforts.

MMA's marketing plan involves an ongoing, dynamic effort to identify new business and to increase the business with existing customers. The marketing department maintains extensive records of each marketing effort and its status, and reports on these efforts are provided to the MMA Board of Directors on a regular basis. In addition to the continuous attention to new business opportunities, MMA marketing personnel are in regular contact with the customers, both in person and by telephone or e-mail. For example, attached as Exhibit A is a log maintained by a senior MMA marketing person tracking his meetings with customers over the last several years. In addition to business opportunities, MMA is sensitive to providing the best service possible to customers. As described in the abandonment application, train service over the last several years has been reduced from time to time, but additional trains were also added to the schedule at various times, particularly for the benefit of Fraser Papers, when customers had increases

in their business and additional service was warranted. Only a few (2 to be exact—Irvig and Fraser) customers on the Abandonment Lines did not understand the reasons for and accept service changes in line with business volumes, and these 2 customers had the greatest impact on the declining volumes. All other customers were reasonable and understanding of the changes, and worked closely with MMA to adjust to the changes. I am unaware of any production shutdowns by any customers due to MMA service levels.

The marketing efforts over the last several years have yielded a number of successes. For example, over the past year we were able to generate new rail business for the movement of wood chips between Portage, Maine and South Lagrange, Maine. At South Lagrange, the wood chips are transferred from rail to trucks for final delivery to Old Town, Maine, a distance of approximately 138 highway miles. This business had been moving exclusively by truck, but we were able to secure this business, even though the rail portion is relatively short and transloading costs had to be factored into the delivery equation. The continuance of this business into 2010 was the main reason that MMA revenues attributable to the Abandonment Lines increased slightly from the Base Year to the Forecast Year. Another example of new business is mulch that is being shipped from Irving at St. Leonard to South Lagrange, Maine, where it is transloaded to trucks for furtherance into New England markets.

Even though there has been success in generating new business, much of it is low margin wood products, such as the wood chips and mulch mentioned above. The problem on the Abandonment Lines continues to be the deterioration of the traffic of the base customers. New business that has been attracted to the Abandonment Lines is

providing revenues and generating support, but, unfortunately, not enough high margin revenue to overcome the losses.

VERIFICATION

State of Maine

ss:

County of Penobscot

I, Joseph R. McGonigle, being duly sworn, depose and state that I am Vice President-Sales & Marketing of Montréal, Maine & Atlantic Railway, Ltd. ("MMA"), that I am authorized to sign the foregoing Rebuttal Verified Statement on behalf of MMA, that I have examined all of the statements contained in the Rebuttal Verified Statement and that all such statements are true and correct to the best of my knowledge and belief.

Joseph R. McGonigle

Subscribed and sworn to
before me this ____ day of
May, 2010

Notary Public

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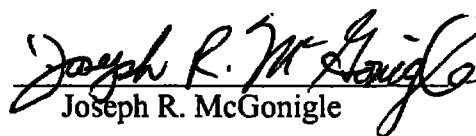
VERIFICATION

State of Maine

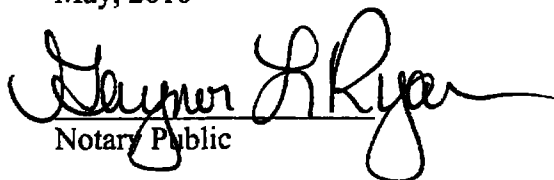
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Joseph R. McGonigle

Subscribed and sworn to
before me this 21st day of
May, 2010


Notary Public

GAYNOR L. RYAN
Notary Public, Maine
My Commission Expires May 4, 2015

REDACTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB 1043 (Sub-No. 1)

MONTRÉAL, MAINE & ATLANTIC RAILWAY, LTD.--
DISCONTINUANCE OF SERVICE AND ABANDONMENT--
IN AROOSTOOK AND PENOBSCOT COUNTIES, MAINE

REBUTTAL VERIFIED STATEMENT OF ROBERT C. FINLEY

My name is Robert C. Finley, and I have been retained by Montréal, Maine & Atlantic Ry., Ltd. ("MMA") to analyze the avoidable costs and revenues attributable to certain lines of MMA that are proposed for abandonment in the application that was filed in these proceedings. My analysis is set forth in a Verified Statement and exhibits that were filed with the application. The purpose of this Rebuttal Verified Statement is to respond to certain arguments relating to my analysis raised by Irving Woodlands and Irving Forest Products ("Irving") and their consultant, Thomas D. Crowley, and by the State of Maine (the "State") through its consultant, Gary Hunter.

The State has focused its criticisms of my analysis of the on branch costs. The State does not take issue with the revenues or off branch costs as estimated in my analysis. Mr. Crowley and Irving, on the other hand, take issue with my analysis only as it relates to off branch costs. They do not contend that the revenues attributable to the Abandonment Lines or the on branch costs have been miscalculated or are in error. The inference that should be drawn is that the State supports MMA's calculations of off branch costs and that Irving supports MMA's calculations of on branch costs.

The State contends that the on branch branch maintenance of way expenses should be decreased in order to take into account the assumption that Congress will enact an extension of section 45G of the Internal Revenue Code, which permits rail carriers such as MMA to earn tax credits for performance of maintenance. Section 45G expired at the end of 2009, and it has not been reenacted. It is my understanding that both the Senate and the House have passed versions of the legislation, but the versions have not been reconciled. Furthermore, given the other substantial matters on the Congressional agenda, it is not clear whether or when any such reconciliation may be attempted or, even if the legislation passes, whether it will be retroactive to the beginning of 2010. In these circumstances, it would be incorrect to assume, contrary to the current facts, that section 45G is the law. Consequently, my calculation of maintenance of way expenses for the Forecast Year should not be adjusted.

The State contends that the avoidable costs for locomotive and freight car maintenance and for freight car lease rentals have been overstated, because MMA allegedly has "excess capacity" in these areas. The State's argument is that MMA needs only 6 locomotives, not 12, only 5 mechanical employees, not 13, and only 450 freight cars, not 760 to operate the Abandonment Lines. In my analysis, I used information provided by MMA concerning the number of locomotives, freight cars and mechanical employees that are attributable to the Abandonment Lines and would be excess after abandonment. The Rebuttal Verified Statement of Robert C. Grindrod explains why the numbers and amounts used in my analysis, with one exception that is described below, were reasonable in relation to the operation of the Abandonment Lines and therefore correct in describing the avoidable costs attributable to such operations.

In the Base Year, the cost to lease 760 freight cars was appropriately included, for the reasons stated by Mr. Grindrod. MMA has now clarified that leases on 354 of those cars have terminated or will be terminating at various times during the Forecast Year. The rental payments attributable to the 354 cars in the Forecast Year, amounting to \$[], have been eliminated as a result of the termination of the leases. Therefore, I have reduced the Forecast Year car lease expenses by that amount.

I would note, in addition to Mr. Grindrod's justification and support for the costs that I used, that Mr. Hunter is essentially arguing about how he thinks MMA should operate, rather than about the avoidable costs that will be shed by MMA as a result of the abandonment. The use of the term "excess capacity" is really a semantic exercise that could be used to describe any line that is a candidate for abandonment. By definition, such a line has excess capacity, because it has insufficient traffic and revenues to support the costs associated with the line.

The State also argues that transportation costs should be decreased proportionately with the alleged need to decrease the number of locomotives, freight cars and mechanical employees. The logic of this argument is escapable, and the basis for the calculations of the reductions is not clear. In any event, for the reasons outlined above, there is no justification for any adjustment of the transportation costs as set forth in my analysis. The transportation costs are, for the most part, site-specific and well documented.

In connection with the calculation of return on value, the State argues that it was incorrect to use a 38% tax rate, because MMA has not recently paid income taxes and

allegedly there will be no income tax consequences from liquidation of the Abandonment Lines. This argument is not persuasive.

The 38% tax rate was used in order to calculate the return on investment pursuant to 49 CFR 1152.34(c), which provides that the investment base shall be the total of the working capital, the net liquidation value and the "amount of current income tax benefits resulting from abandonment". The sale of the rail, ties and other track material and the real estate in the Abandonment Lines will produce a loss, i.e. the proceeds of sale will be less than the book value, which for MMA will be a tax benefit in the form of an increase in its NOLs. Arguably, the entire amount of the loss could be construed as a tax benefit, but I applied the 38% rate as the generally accepted combined rate for corporations for federal and state income taxes. As a result of an increase in net liquidation value, described below, the sale of the Abandonment Lines would produce a gain, and there would be an income tax liability, rather than a benefit. Ironically, as shown in Exhibit A, accepting the State's argument would benefit MMA by increasing the opportunity costs.

As explained in the Rebuttal Verified Statement of Melody A. Sheahan, the net liquidation value of the rail, ties and other track material has been adjusted as a result of an increase in market prices for scrap rail and in response to several points raised by the State. The net liquidation value of the rail, ties and other track material is, after applying a discounted cash flow analysis, \$[]. As a result of this change, I have recalculated the opportunity costs, and the new calculations are shown in Exhibit A attached.

I have continued to use the railroad cost of capital of 18.15% established by the Board. The State argues that MMA is likely to have a higher debt to equity ratio than

used by the Board in calculating the cost of capital, which would allegedly result in a lower rate of return. For reasons that are not clear, the State concludes that MMA should use a rate of return equal to the interest rate on its loan under the RRIF program.

Use of the Board's cost of capital is required by the regulations. For purposes of calculating a reasonable return pursuant to 49 CFR 1152.34(d), a railroad's actual capital structure is to be used, unless the calculation is not possible or is not representative because the railroad is part of a conglomerate. In such a case, the Board's latest determination of the cost of capital is to be used. As explained in the Rebuttal Verified Statement of Mr. Grindrod, MMA is a subsidiary of a holding company--Montréal, Maine & Atlantic Corp.--and has affiliates in the form a Canadian company that owns the lines in Canada and LMS, a warehouse. For purposes of accounting and financing, this family of companies is generally considered on a consolidated basis, but debt has been issued by several of the companies in the family, including the holding company, LMS and MMA. In these circumstances, calculation of the actual cost of capital is neither possible nor would it be representative, and use of the Board determined cost of capital is appropriate.

For purposes of calculating the amount of the subsidy, I included the entire amount of the rehabilitation cost that was determined by MMA to be necessary in order to put the Abandonment Lines in a state of good repair. The State argues that only the \$3 million in rehabilitation costs necessary to bring a portion of the Abandonment Lines up to FRA class 1 condition can be included in calculating the subsidy. As explained below, I believe that the subsidy was computed correctly.

The entire projected rehabilitation cost was included on the basis of 49 CFR 1152.32(m)(2)(ii), which permits such a result if a potential subsidizer requests a level of service requiring expenditures for rehabilitation. The State is a potential subsidizer, and it has agreed with MMA, in the State's application for stimulus funds in 2009 pursuant to the TIGER program, that the rehabilitation costs for the Abandonment Lines were approximately \$18.9 million, not including \$3 million for the Limestone subdivision. Irving is a potential subsidizer, and it has complained about MMA's service, thereby implying that rehabilitation costs should be incurred in order to provide better service. The Verified Statement of Melody A. Sheahan discussed the service improvements and efficiencies that could be obtained by performance of the rehabilitation. Consequently, inclusion of the entire \$21.9 million is appropriate.

Both the State and Irving contend that there are various expenses that will be incurred as a result of the abandonment that should be taken into account in some fashion, with the result being that the avoidable losses from the operation of the Abandonment Lines should be reduced. These expenses relate to increased costs for the operation of the line between Madawaska and Van Buren, which is not part of the Abandonment Lines, after the abandonment. In addition, the State claims that \$4.9 million that MMA allegedly owes the State under certain grant agreements should be offset against the avoidable loss.

Neither the State nor Irving cites any regulation or decision of the Board for the proposition that any such expenses should be taken into account as an offset for purposes of calculating the avoidable loss. In fact, the regulations do not require any such adjustment. Mr. Crowley tacitly admits this by creating a new line in his rendition of

Exhibit 1 in order to show the credit against these expenses. Because these expenses do not relate--are not attributable--to the Abandonment Lines, the logic for excluding them from the avoidable loss analysis is compelling. If these expenses should be taken into account at all, logically they should increase the avoidable cost, rather than decrease it. Furthermore, as described in the Rebuttal Verified Statement of Mr. Grindrod, the expenses on the Van Buren Line, as estimated by Mr. Crowley, are substantially overstated.

Mr. Crowley notes that I made an error in calculating the fuel costs in the Forecast Year. He is correct. The error is not in my calculations, but in my Verified Statement. I did use \$2.18 per gallon. The \$2.11 is a typographical error in my Verified Statement. In fact, however, as noted by Mr. Grindrod in his Rebuttal Verified Statement, the actual average fuel cost for the first quarter of 2010 was \$2.36.

Mr. Crowley has raised several points in connection with my calculation of off branch costs. Specifically, he claims that the determination of off branch costs was incorrect due to an alleged inappropriate use of a "circuitry factor", purportedly double counting the return on investment for railroad provided cars, improperly assigning terminal costs and including certain off branch costs for a movement that originated and terminated on the Abandonment Lines.

I agree that I inadvertently included as an off branch costs a movement of 8 cars between Fort Kent, Maine and New Limerick, Maine, both of which are on the Abandonment Lines. As a consequence, \$[] should be deducted from the off branch cost as I calculated them.

My calculation of off branch costs included freight cars that were leased by MMA and that were "provided", which is Mr. Crowley's term, to customers for loading. As noted in my Verified Statement, MMA does not own any of the cars used on the Abandonment Lines; rather, they are all leased. I took into account these leased cars as a surrogate for owned cars provided to customers for loading in order to reasonably account for the expenses of the car leases for purposes of off branch costs. As stated in line 6b of Exhibit 1, I did not include any return on investment for leased cars. Consequently, Mr. Crowley's criticism that I included a return on investment for these cars is inaccurate.

I reviewed Mr. Crowley's verified statement and his workpapers, but I was unable to understand the basis for his criticism on the 2 other items of off branch costs. He does not provide any citations to any regulations in support of his positions, and his workpapers did not allow me to understand any of his calculations. While I do not understand the basis for Mr. Crowley's criticism concerning a "circuitry factor" or terminal costs, I believe that the steps I took, as described below, to calculate off branch costs were correct and in accordance with the simplified cost procedure set forth at 49 CFR 1152.32(n)(4).

In order to develop off branch costs, I used the "Railroad Cost Program" option on the opening screen of the STB's URCS program, which is available as a download directly from the STB's website. Following the STB program, I selected the Eastern Region costs in the first section of data inputs, referred to as "Define Movement Segments". The distances that I specified were equal to the MMA mileage from the end point of the Abandonment Lines to the interchange location or origin/destination if it was

on an MMA line other than the Abandonment Lines. For shipment type, I used "OD" (originate deliver) for cars originating on the Abandonment lines and "RT" (receive terminate) for cars terminating on the Abandonment Lines.

In the Freight Car and Shipment sections of the input screen, I always used the single car button. I also input the movement specification information, such as car type and tons per car. After making all of the necessary inputs, I used the "Process Results" button in order to generate a report of the URCS off branch costs. I used the total variable cost for the Eastern Region from the summary page. I did not alter any aspect of the URCS model, but rather accepted the model and its results as provided on the STB website.

As noted above, I believe that my methodology was consistent with the STB regulations and a correct application of URCS. Consequently, I do not believe there is any basis to adjust the off branch costs on the basis of Mr. Crowley's circuitry factor and terminal arguments.

After the abandonment, MMA expects to continue to receive revenue from certain traffic that currently moves overhead on the Abandonment Lines to and from the Fraser Paper facility at Madawaska and will likely move over the Van Buren Line to Canadian National after abandonment or traffic that might be converted to transload operations involving MMA. Mr. Crowley contends that this so-called "retained revenue" must be offset against the avoidable cost shown by MMA in Exhibit 1. This argument totally misconstrues the Board's avoidable revenue and cost regulations. The revenues and costs of the Base Year and the Forecast Year are determined and calculated upon the assumption that the Abandonment Lines continue to be operated. There is no

requirement, or provision in the regulations requiring MMA, to calculate revenues or expenses that MMA will have after the abandonment is put into effect.

I have revised the Exhibit 1 that was submitted with the application. Specifically, I have included the new NLV to take into account the increase in market price for rail and other track material, I have corrected the off branch costs for the Base Year by eliminating the local move between Fort Kent and New Limerick and I have adjusted the freight car lease expense for the Forecast Year, as discussed above. Exhibit B attached shows the new Exhibit 1 with across the fence values for real estate, and Exhibit C shows the new Exhibit 1 on the basis of corridor values for the real estate.

I note that certain of the parties, such as Irving and the State, argue that MMA would have enjoyed additional carloads and revenue on the Abandonment Lines if it had provided better service. In addition, Louisiana-Pacific argues that the carloads and revenue for the Base Year should be adjusted upward in order to take into account the current recession. In order to test these arguments, I did an analysis on the assumption that MMA's revenues on the Abandonment Lines were equivalent to its best revenue year, which was 2005. With [] additional cars and \$[] in additional revenue over and above the Base Year levels, the avoidable loss in the hypothetical base year was \$[] and the avoidable loss in the forecast year was \$[]. These results are shown in Exhibit D attached. The conclusion to be drawn is that even with additional traffic and revenue of this magnitude the Abandonment Lines would still incur huge avoidable losses justifying abandonment.

VERIFICATION

Commonwealth of Massachusetts

ss:

County of Middlesex

I, Robert C. Finley, being duly sworn, depose and state that I have been retained by Montréal, Maine & Atlantic Railway, Ltd. to analyze the avoidable costs and revenues attributable to certain lines of railroad, that I have examined all of the statements contained in the foregoing Rebuttal Verified Statement and that all such statements are true and correct to the best of my knowledge and belief.

Robert C. Finley

**Subscribed and sworn to
before me this __ day of
May, 2010**

Notary Public

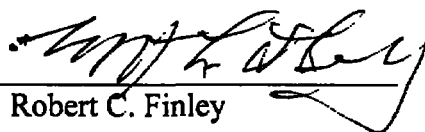
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Commonwealth of Massachusetts

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County of Middlesex

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Robert C. Finley

Subscribed and sworn to
before me this 10 day of
May, 2010


Notary Public

Bernice M. Melanson
Notary Public, Massachusetts
My Commission Expires July 24, 2016

REDACTED

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB 1043 (Sub-No. 1)

MONTRÉAL, MAINE & ATLANTIC RAILWAY, LTD.--
DISCONTINUANCE OF SERVICE AND ABANDONMENT--
IN AROOSTOOK AND PENOBSCOT COUNTIES, MAINE

REBUTTAL VERIFIED STATEMENT OF RICHARD M. GOTTLIEB

My name is Richard M. Gottlieb. I am a consultant who specializes in real estate transactions and development and, in particular, in transactions involving real estate owned by railroads. I was retained by Montréal, Maine & Atlantic Railway, Ltd. ("MMA") in connection with its application to abandon approximately 233 miles of line in the Penobscot and Aroostook Counties, Maine. I submitted a Verified Statement earlier discussing the market for acquisitions of abandoned rail corridors for nonrail uses in northern Maine. The purpose of this Rebuttal Verified Statement is to respond to certain arguments raised by parties in the abandonment proceedings and to expand further on the reasons why the use of a corridor methodology is appropriate in order to determine the value of the abandoned rights-of-way.

I understand that the Board has recognized the use of a corridor methodology for valuing real estate when there is a documented specific interest in purchases of assembled corridors. I also understand that the best evidence of a documented specific interest, according to Board precedent, would be a signed purchase and sale agreement or a

definitive proposal. In this case, there is a specific documented interest in acquisition of the real estate in the rights-of-way as corridors for recreational trails and logging roads and in the use of the corridors for utility transmission purposes. Furthermore, as demonstrated below, the State has recognized, by means of legislation and purchases, the importance of preserving abandoned rail corridors for nonrail uses.

In my Verified Statement, I described the interest of private parties in the acquisition of the real estate in the rights-of-way. As indicated in the enclosed purchase and sale agreement, I had conversations with [] concerning the possibility of selling approximately 82 miles of right-of-way consisting of the 4 subdivisions that are east of the main line between Millinocket and Madawaska. []'s principal interest in the rights-of-way is based upon their utility as logging roads. The discussions have not resulted in a final agreement, but the conversations have continued, as late as last week, and it is likely that they will continue through the time when the abandonment has been approved and MMA is in a position to effectuate a transaction. In addition, approval of the abandonment, which will afford MMA the ability actually to implement sales, will generate additional private sector interest in these rights-of-way.

It is anticipated that there will be an interest in acquiring the rights-of-way for purposes of converting them into private logging roads. Maine already has an extensive system of private roads used by logging companies in order to move timber from the harvesting areas in the forests to locations for processing or further transportation. As described in the opposition filed in the abandonment case on behalf of the Irving interests, these private roads accommodate trucks that are 225,000 pounds gross weight, or over twice the size of trucks that are authorized on public roads. Acquisition of the

rights-of-way to expand this private road system would be consistent with Irving's arguments and with prior sales by railroads in Maine. For example, the comparable sales numbers 3 and 4 in Mr. Sherwood's corridor appraisal were sales to logging companies, and [], referred to above, has an interest in using the rights-of-way for logging roads.

In my earlier Verified Statement, I also described in general terms the developing market for use of the rights-of-way for utility transmission purposes. MMA attempted to protect the confidentiality of its discussions with interested parties, but I am advised that the Board's decision on a motion to compel resulted in the production, subject to the protective order in this case, of a number of documents relating to such discussions. MMA initially received unsolicited proposals for the use of its rights-of-way, including the abandonment lines, for the transmission of low cost hydro and wind generated electric power from Northern Maine and Canada to the consuming markets in the northeastern United States. Subsequently, after initial conversations, MMA issued a request for proposals and received development and acquisition proposals from major players in the power generation market—[] The proposals, which are attached as Exhibits A, B, C and D, describe the substantial experience and financial wherewithal of these entities, as well as the suitability of the rail corridors for power transmission.

MMA expects to enter into negotiations with one or more of the proposers with the goal of reaching an agreement or agreements pursuant to which MMA would grant an option to acquire an easement for utility transmission purposes for portions or, or for up to all, of the rights-of-way in the MMA system, including the Abandonment Lines. I

have been designated by MMA as the lead negotiator. At the moment, it is difficult to quantify the value of such rights as they may apply to the Abandonment Lines, but the proposals described above and the beginning of the negotiation phase demonstrate that there is a documented market for the purchase and sale of valuable rights, for nonrail purposes, in these lines.

The State recently sent MMA a letter, a copy of which is attached as Exhibit E, indicating its belief that MMA could not transfer utility rights due to the pendency of the abandonment proceeding. MMA has responded to the State in a letter dated April 29, 2010, a copy of which is attached as Exhibit F, stating MMA's view that dispositions of utility rights are permissible so long as rail operations are not affected and suggesting that the issue of utility easements is really a subject for discussion for purposes of the appropriate calculation of NLV. MMA's position is that the State should either allow MMA to retain the utility rights for its own account or the State should compensate MMA in order for it to acquire such rights, but that the State cannot attempt to prohibit the transfer of such rights and, at the same time, seek to acquire the rights without compensation.

Based upon my experience with rail real estate issues in Maine, as described in my Verified Statement, the State has long recognized the value of railroad rights-of-way for nonrail purposes. In 1989, for example, the Legislature enacted Section 7104 of Title 23 of the Maine Revised Statutes, which gives the Department of Transportation the ability to acquire rail lines in the event of abandonment. Over the years, the State has acquired many miles of right-of-way, which are still actively used for rail transportation purposes, and others portions of which comprise parts of the vast State network of trails

that are used primarily for snowmobiling and all-terrain vehicles. The legislation also recognizes--and eliminates--the risk that the cessation of rail service could trigger reversionary rights pursuant to which abutting landowners might claim ownership of portions of a right-of-way. The legislation protects the integrity of the rail corridors by providing that the "abandonment of service shall not mean or imply that the rights-of-way on a railroad line have been abandoned. In the event that the railroad, any person, firm or corporation, or any agency shows interest in the eventual restoration of service, the rights-of-way shall not be deemed abandoned."

The State, acting through the Maine Department of Conservation ("DOC"), has been a prolific purchaser of abandoned rights-of-way for recreational purposes. More significantly, the DOC has recognized the corridor methodology for purposes of its prior purchases of abandoned rail lines. As noted in my Verified Statement, MMA and DOC are currently parties to a purchase and sale agreement in which DOC has agreed to pay, based upon its own appraisal, a price equivalent to \$[] per mile. This price reflects a corridor methodology, rather than an across the fence appraisal.

In prior transactions, DOC has explicitly agreed to acquire rights-of-way based upon a corridor appraisal. For example, in connection with its offer to acquire approximately 43 miles of abandoned right-of-way from BAR, referred to in my earlier Verified Statement, DOC and BAR agreed that the purchase price would be determined by an appraiser who would be selected by DOC and who would be instructed to appraise the lines based upon the corridor methodology. DOC selected Mr. Sherwood, who dutifully appraised the abandoned lines on the basis of their corridor values. When the appraisal was completed, DOC initially refused to proceed, because its principal funding

source, Land for Maine's Future, insisted on paying no more than across the fence value. BAR proceeded to find a private sector purchaser who was willing to pay for the lines at the appraised corridor value, but before the transaction closed DOC reversed its position and agreed to pay corridor value. Enclosed, as Exhibits G and H, respectively, are the sales contract with a private purchaser, referred to above, and a letter dated April 27, 2005 from counsel for BAR to DOC describing the history of the transaction. Not surprisingly, the private purchaser wanted the corridor for logging roads.

The willingness of the State to pay corridor values to acquire abandoned railroad rights-of-way is not surprising given the substantial beneficial impact of snowmobiling on the economy of Maine. The State has approximately 13,500 miles of snowmobile trails (www.mesnow.com) and, according to a report in the *Bangor Daily News* on April 27, 2010, snowmobiling in Maine is a \$350 million annual business responsible for 23,000 jobs. A study by the University of Maine puts the annual economic impact at \$460 million (www.snowmobile.org/features_revenues.asp). Clearly, the return on the State's investment in abandoned rail corridors has been significant.

In its opposition, Irving (at pages 35-36) discusses the fact that MMA does not have fee title ownership to the entire length of the Abandonment Lines and attempts to discount the explanation in my Verified Statement as to why the lack of fee ownership would not be a problem with respect to the marketability or value of abandoned corridors. Rather than making a "simple assumption" that attempted to "wish these problems away", I provided the rationale and evidence that supported my conclusions. First, DOC and other agencies of the State have a statutory provision that protects them. Private purchasers have been able, in my experience, to obtain title insurance at reasonable cost.

Significantly, as I stated in my Verified Statement, I have seen no situation in which the possibility of reversionary rights precluded a sale or affected the price. In response, Irving has offered only its unsupported and unsubstantiated opinion.

VERIFICATION

State of New Jersey

ss:

County of Bergen

I, Richard M. Gottlieb, being duly sworn, depose and state that I have been retained by Montréal, Maine & Atlantic Railway, Ltd. to analyze the potential market for the sale of certain real estate and interests in real estate, that I have examined all of the statements contained in the foregoing Rebuttal Verified Statement and that all such statements are true and correct to the best of my knowledge and belief.

Richard M. Gottlieb

Subscribed and sworn to
before me this __ day of
May, 2010

Notary Public

VERIFICATION

State of New Jersey

ss:

County of Bergen

I, Richard M. Gottlieb, being duly sworn, depose and state that I have been retained by Montréal, Maine & Atlantic Railway, Ltd. to analyze the potential market for the sale of certain real estate and interests in real estate, that I have examined all of the statements contained in the foregoing Rebuttal Verified Statement and that all such statements are true and correct to the best of my knowledge and belief.


Richard M. Gottlieb

Subscribed and sworn to
before me this 20th day of
May, 2010

Sworn to and subscribed before me
this 20th day of MAY 2010



REDACTED

REDACTED

REDACTED

REDACTED



Eric M. Hocky
Direct Dial: 215 640 8523
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ATTORNEYS AT LAW SINCE 1895

VIA ELECTRONIC MAIL

James E. Howard, Esq.
1 Thompson Square
Suite 201
Charlestown, MA 02129

April 28, 2010

Re: STB Docket No. 1043 (Sub-No. 1)
Montreal, Maine & Atlantic Ry., Ltd. – Discontinuance of Service
and Abandonment – In Aroostook and Penobscot Counties, ME

Dear Jim:

We have reviewed the documents that you produced with respect to corridor use of the property and are distressed to see that as late as April 2, 2010, MMA was still actively soliciting proposals under which it proposed to grant exclusive options that would burden the Abandonment Lines, and that would have the entire option payment paid in advance. Since no signed option agreements were included, we assume that none have yet been finalized.

We believe that any grant of any rights that would burden the Abandonment Lines at this point in the proceeding while the State and MMA are negotiating /mediating a possible purchase, and after the State has otherwise indicated an intention to make an offer of financial assistance, would be prohibited under the STB's regulations. *See Railroad Ventures – Abandonment Exemption*, STB Docket No. AB-556 (Sub-No. 2X), served January 7, 2000. *Cf. Pyco Industries, Inc. – Feeder Line Application*, STB Finance Docket No. 34890, served January 24, 2007 (prohibiting sales after carrier had notice of intent to file feeder line application).

Accordingly, please confirm to us that no interest in the Abandonment Lines will be granted by MMA during the pendency of the abandonment proceedings, including any OFA proceedings. If MMA is unwilling or unable to do so, the State will seek an order from the STB prohibiting any such transfer.

We look forward to your prompt response.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Eric M. Hocky', written over a printed name and title.

Eric M. Hocky

EMH/e

cc (by email):
Toni Kemmerle, Chief Counsel

(P0098616)

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April 29, 2010

VIA E-MAIL

Eric M. Hocky
Thorp, Reed & Armstrong
One Commerce Square
2005 Market Street
Suite 1000
Philadelphia, PA 19103-7041

Dear Eric:

This will acknowledge receipt of and respond to your letter of April 28, 2010, on behalf of the State of Maine, in which you stated that you believed that any transfer by MMA of utility rights relating to the abandonment lines would violate STB regulations. Furthermore, you asked that MMA confirm that no interest in the lines would be granted during the pendency of the abandonment proceedings.

The discussions between MMA and Maine DOT concerning the potential sale of the abandonment lines to the State have included the subject of the utility rights. The State has indicated that it wants such rights to be transferred with the fee interest in the line, but the State has been unwilling to acknowledge that such rights have any value or that the State should pay to acquire such rights. MMA has stated clearly that it wants to retain such rights and is attempting to negotiate a transaction or transactions to grant options or easements for utility purposes using not only the abandonment lines but also other parts of its system.


MMA has been proceeding with its discussions with potential acquirers of utility transmission rights, and, after considering several proposals, copies of which you now have, MMA intends to enter into negotiations for an option/easement agreement with one of the proposers. Any such agreement will provide explicitly that exercise of utility rights cannot interfere with rail operations. Indeed, the party with which MMA intends to negotiate understands that any utility transmission system must coexist with rail operations.

I think you have mischaracterized the cases that you have cited in your letter for the proposition that a disposition by MMA of utility rights would be prohibited by STB regulations. The Railroad Ventures decision, for example, states clearly that dispositions

of property by a selling railroad should be taken into account in the establishment of net liquidation value and that there is no basis to enjoin or undo dispositions so long as they do not adversely impact future rail operations.

With respect to the question of compensation for utility rights, MMA respectfully believes that the State cannot have it both ways. If the State wants the line with all utility rights intact, it needs to recognize the value of those rights and pay for them. If it does not want to pay, MMA should be able to retain and transfer such rights so long as such a transfer does not restrict rail operations. Presumably, the mediator will be able to provide some guidance on this issue.

Very truly yours,


James E. Howard

cc: Robert C. Grindrod
Linda J. Morgan

SALES CONTRACT

January, 2005
 This SALES CONTRACT (this "Sales Contract") is made and entered into as of the 5th day of November, ~~2004~~, by and between JAMES E. HOWARD in his capacity as Trustee for the Estate of BANGOR & AROOSTOOK RAILROAD COMPANY, Chapter 11, Case No. 01-11565 (the "Seller"), and ~~XXXXXXXXXX~~, of ~~XXXXXXXXXX~~ Maine (the "Buyer"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties hereby agree as follows:

1. PROPERTY SOLD. Seller agrees to sell and convey and Buyer agrees to buy, upon the terms and conditions hereinafter set forth, all of Seller's right, title and interest in that certain real property and any improvements situated thereon, generally described as a 5.9 mile long portion of the Patten Branch Line rail corridor of the Bangor and Aroostook Railroad Company located in the Towns of Crystal and Sherman, situated in Aroostook County, Maine, and also in the Town of Patten, situated in Penobscot County, Maine, which portion begins at Patten Junction, so-called, located in the Town of Sherman and continues through the above mentioned towns to the easterly side of Main Street in Patten (the "Property").

2. CONSIDERATION. Subject to the terms of paragraph 4 below, the purchase price for the Property shall be ONE HUNDRED TWENTY THOUSAND DOLLARS (\$120,000.00) to be paid in cash or cash equivalent at closing. The purchase price shall be paid as follows:

(a) Upon mutual execution of this Sales Contract, Buyer shall deposit with Seller the sum of Twelve Thousand Dollars (\$12,000.00) to be held in escrow until the closing or until refunded or applied in accordance with this Sales Contract.

(b) At the closing, the entire purchase price shall be paid to Seller in cash or cash equivalent, minus a credit for the deposit described in subparagraph (a) above, which deposit will be applied to the purchase price.

3. TITLE. Seller shall deliver title to Buyer by Quitclaim Trustee's Deed, free and clear of all liens, interests, claims and encumbrances except (i) reservations, easements, restrictions and covenants of record, (ii) zoning and building laws or ordinances, and (iii) valid and enforceable real estate tax liens, water fees and sewer liens (collectively, "Tax Liens"). As a condition precedent to Seller's obligation to sell the Property, and Buyer's obligation to purchase the Property, the State of Maine, Department of Transportation (the "DOT") shall have delivered to Seller for recording a release of the State's purchase option on the Property under 23 M.R.S.A. § 7105. If Seller is not able to secure the release by the DOT of its option to purchase pursuant to 23 M.R.S.A. § 7105, this Sales Contract shall be null and void and the deposit shall be returned to Buyer at the time of the Seller's closing with the DOT. In addition, in the event the Trustee sells the Property to any other person or entity at a price that equal or exceeds \$120,000.00, then the Seller shall pay the Buyer a break-up fee (the "Break-up Fee") of Ten Thousand Dollars (\$10,000.00) from such sale proceeds, payable to Buyer at the time of the Seller's closing with such other buyer.

4. CLOSING COSTS AND ADJUSTMENTS. Any and all unpaid real estate taxes, assessments and/or water and sewer user fees are the responsibility of Buyer. All transfer taxes,

(1) Establishing Procedures for the Sale, Free and Clear of Liens, Claims and Encumbrances, of Certain Parcels of Excluded Real Estate; (2) Granting the Trustee Authority to Sell the Parcels of Excluded Real Estate Free and Clear of Liens, Claims and Encumbrances Other Than Valid and Enforceable Real Estate Tax Liens; and (3) Establishing Amount of Real Estate Taxes.

As a condition precedent to Seller's obligation to sell, and Buyer's obligation to purchase, the Property, the United States Bankruptcy Court for the District of Maine shall have entered an order that approves of the Break-up Fee.

9. **BROKER.** Seller and Buyer acknowledge that neither party has used a broker in this transaction, and no sales brokerage commission is due and payable as a result of this Sales Contract. Each party shall indemnify and hold harmless the other for breach of the representation and warranty in this paragraph, with the indemnifying party being the party whose actions give rise to the claim asserted.

10. **DEFAULT.** In the event that Buyer fails to close hereunder for a reason other than default of Seller, the deposit shall be deemed to be paid by Buyer to Seller and shall be retained as Seller's separate and exclusive property, this Sales Contract shall terminate, and Seller shall have no other remedies. In the event that Seller fails to close hereunder for a reason other than the default of Buyer, Buyer's sole remedy shall be a refund of the deposit, and Buyer shall have no other remedies.

11. **NOTICES.** All notices directed to the parties hereto shall be in writing and mailed to the respective party at the address listed below its respective signature line.

12. **PARTIES.** This Sales Contract shall be binding upon and shall inure to the benefit of the parties and their successors and assigns. As used herein, words in the singular include the plural, and the masculine includes the feminine and neuter genders, as appropriate.

13. **SURVIVAL.** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it will survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

14. **CHOICE OF LAW.** This instrument shall be construed under the laws of the State of Maine.

15. **ENTIRE AGREEMENT AND COUNTERPARTS.** This Sales Contract contains the entire agreement of the parties, and there are no representations, inducements or other provisions other than those expressed in writing. All changes, additions or deletions hereto must be in writing and signed by all parties. This Sales Contract may be executed in two counterparts, which together shall be considered the one and the same agreement.

16. SPECIAL STIPULATIONS. Buyer acknowledges that Seller is a debtor in a Chapter 11 proceeding in the United States Bankruptcy Court for the District of Maine, that Seller is subject to the authority of that Court, and that Seller's obligations are subject to approval by that Court. Seller executes this Sales Contract solely as Trustee in the administratively consolidated Chapter 11 Bankruptcy cases of In re Bangor & Aroostook Railroad Company, Chapter 11 Case No. 01-11565 as described in Section 8 above. The Trustee, in his individual capacity, is not personally liable for any express or implied obligations hereunder, and only the bankruptcy estate (Seller) and the Buyer are bound by this Sales Contract.

WITNESS OUR HANDS AND SEALS, as of the date first above written.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

JAMES E. HOWARD, CHAPTER 11
TRUSTEE OF BANGOR & AROOSTOOK
RAILROAD COMPANY

By: James E. Howard
James E. Howard, Trustee
One Thompson Square, Suite 201
Charlestown, Massachusetts 02129
617-886-9322 - Phone
617-886-9324 - Fax

P:\dgelgaj\BAR\Sales Contract(Patten-Sherman)\11704\DOC

[signed copy available]

ROGER A. CLEMENT, JR.
PARTNER
rclement@verrilldana.com
Direct: 207-253-4412

ONE PORTLAND SQUARE
PORTLAND, MAINE 04112-0586
207-774-4000 • FAX 207-774-7499
www.verrilldana.com

April 27, 2005

David Soucy, Director
Bureau of Parks and Lands
Maine Department of Conservation
22 State House Station, Key Plaza
286 Water Street
Augusta, ME 04333

Re: Bangor & Aroostook Railroad Company, Chapter 11 Case No. 01-11565
Purchase of Corridors

Dear David:

Today I received the original of your signature on the Sales Contract, which constitutes the State of Maine's offer (the "State's Offer") to purchase the Mapleton to Washburn and Houlton to Phair Junction corridors (the "Corridors") from the Trustee, along with the state's check in the amount of \$73,150, which is 10% of the \$731,500 offer made by the state. As you know from our telephone conversations, on Thursday, April 21, 2005, the Trustee received an offer to purchase the Corridors and other remaining land from the Trustee for a total purchase price of \$865,000 (the "Competing Offer"). The Trustee has determined that the Competing Offer is substantially higher and better than the state's offer, and has therefore elected to accept and move forward with the Competing Offer. Before moving forward with the Competing Offer, the Trustee gave the state the opportunity to match it. You declined that invitation. Accordingly, I am returning with the letter the state's \$73,150 deposit check. As you know, the Trustee's decision to go forward initially with the Competing Offer does not in any sense prevent the state from purchasing the Corridors in accordance with the Court-established procedures.

In your April 22, 2005 e-mail to me and in our telephone conversations over the last few days you have urged that the Trustee has an obligation to reject other offers in light of the "deal" that the state struck with the Trustee. Your suggestion is wrong because (as you are well aware) the Trustee has an obligation to accept higher and better offers. Additionally, the state has only itself to blame for the inexorable delay in committing to (and ultimate failure to ever commit to) the "deal" you say existed on February 7. Although the Trustee has no obligation to explain his position in further detail, I will do so here in order to make sure the record is clear.

Your suggestion that the Trustee was bound by a "deal" that is insulated from higher offers completely ignores that the Bankruptcy Court's September 3, 2003 Order (the "Court Order"), which creates a 21-day period within which any party may submit, and the Trustee may accept, any higher and better offers for any real estate that he contracts to sell. The Court Order embodies a fundamental precept that applies in this and all bankruptcy cases--the Trustee will

April 27, 2010

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sell to the person who makes the highest and best offer in accordance with the rules set by the Court. You are well aware of the competitive bidding process prescribed in the Court Order from your own previous experience in twice purchasing corridors from the Trustee by prevailing over prior bidders. The state first submitted a competing bid in March 2004 for the purchase of the former Katahdin Ironworks branch line (the "KI Branch"). The state submitted its second competing bid in February 2005, thereby enabling it to obtain the Patten to Sherman corridor. In both cases, the state had used the 21-day bidding period to upset another offeror who had put the property under contract by signing a contract and tendering the required 10% deposit. Any "deal" that may have existed between the Trustee and the state as to the Corridors expressly allowed for higher and better offers. The state's Offer makes clear that "[t]he parties hereto are subject to the terms and conditions of [the Court Order]." Whether the state was outbid before or after the 21-day period began is irrelevant. The bottom line is that the state cannot purchase the Corridors if another buyer is willing to pay more. You have employed that rule for the state's benefit on two occasions, and you have included language in the state's Offer making clear that you understood this. For you to now imply that you thought you had a deal that was not subject to higher and better offers is, to say the least, disingenuous.

Your communications with me have also ignored the state's responsibility for the situation it now finds itself in. Simply put, the state was unwilling to commit to the "deal" in the only way parties can commit to the purchase and sale of real estate--by entering into a written contract. At the February 7 meeting, the Trustee was ready, willing and able to sign a contract with the state. The state agreed to proceed based on one of two options that the state could elect.¹

At the conclusion of the February 7 meeting, you informed us that you needed about a week to let us know whether the state would elect "Option A" or "Option B." Five weeks later, on March 15, 2005, in response to considerable prompting by me, you finally announced the state had decided not to acquire additional property, but would stick with just the Corridors. You also stated that "I need to quibble with you some about your calculations re: price, however." On March 16, 2005, you told me that the state would require the Trustee to release his interests in the northern four miles of the Katahdin Ironworks branch as part of the purchase of the Corridors. I told you that the Trustee was not willing to link the transactions. You did not concede the point. On March 18, I sent you a Sales Contract for the Corridors. In March 22, 2005, you told me by telephone that the state needed to impose a new condition on its purchase of the Corridors. The state needed to obtain the consent of six separate towns over which the Corridors crossed. You told me that you were in the process of trying to get on agendas for selectmen's meetings in those towns and that you would try to satisfy this contingency as quickly as possible.

I repeatedly asked you and David Rodrigues to execute the Sales Contract and return it to me with the required 10% deposit. I left numerous telephone messages. I sent David Rodrigues an e-mail on March 30 which read as follows: "Nearly two months have passed since we met in

¹ Under "Option A" the State would buy the Corridors alone for a price that I calculated to be \$731,500. Under "Option B", the State would buy the Corridors along with certain other land of the Trustee which the state had identified.

April 27, 2010

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my office on February 9 [we actually met on February 7], and nearly two weeks have passed since I sent you the attached P&S. May I please have your signature and deposit? Thanks." That same day, David sent me an e-mail indicating that he had made some edits to the Sales Contract and sent it to the state's attorney for review and informing me that the state wanted to include in the same transaction with the Corridors the state's acquisition (at no additional cost) the remainder interest in the KI Branch and to obtain the Trustee's approval to perform a "friendly condemnation" on the entire KI line, even portions of the line that the state had not yet purchased from the Trustee.

On April 4 I again e-mailed David and asked him about the status of the state's efforts to obtain consents from the towns. I also nudged him again to send the executed Sales Contract. Having heard nothing, I e-mailed David again on April 8 and asked "Where do we stand?" David's April 8 reply did not answer my question about the town consents, but informed me that the state's attorney "would be getting to the Sales Contract soon." At this point, two months had elapsed since the meeting in my office on February 7. On April 15, David informed me by e-mail that "Hopefully we will be able to get the contract out to you next week."

Why did the state fail to enter into a written agreement with the Trustee in the ten weeks that elapsed after you say we had a deal? Is it because the state really was not finished trying to negotiate? Is it because you perceived no obligation to move this along at a pace that remotely resembles the conduct of business in the "real world?" Is it because the state needed that much time to construct additional conditions to the state's willingness to close? Is it because the state needed to mobilize a bureaucracy that has been dealing with the purchase of the Corridors since we first reached a "deal" in August 2003—a deal that the state refused to honor? I cannot answer these questions, but I do know that the state failed to commit to the "deal" and assiduously avoided committing itself by signing a contract. In light of the state's inaction, whether deliberate or not, and in light of the history of the dealings between the state and the Trustee, it is unconscionable for the state to blame the Trustee for the situation it now finds itself in.

On April 21, Rich Gottlieb met with three individuals (the "Buyers") for the purpose of discussing the sale of the remaining (non-Corridor) land of the Trustee. As you know, the Buyers made an offer to buy not only all of the remaining land, but also the Corridors, at a price far in excess of what the state had offered. The Trustee did not solicit from the Buyers any offer for the purchase of the Corridors, nor did he even have an inkling that the Buyers were interested in the Corridors until the meeting with Rich Gottlieb on April 21. The Buyers offered to purchase all remaining land from the Trustee, including the Corridors, for \$865,000. Based on the estimated value of the remaining land, this offer was substantially higher than \$731,500 for the Corridors. They signed a contract without contingencies (other than the risk of being out-bid) and delivered a deposit within two or three business days.

When I learned that the Buyers were interested in purchasing the Corridors, and while Rich's meeting with Buyers was still in progress, I called David Rodrigues and left him a voicemail telling him that we now had received or were about to receive a competing offer on the Corridors, and that the state should strongly consider sending the Sales Contract with the 10% deposit immediately. As a result of my call to David, as well as my conversation with you, on April 22 I finally received an e-mail containing a copy of the state's signature on the Sales Contract. To my amazement, the Sales Contract contained considerable modifications to the

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standard form that we had agreed upon for the Patten-Sherman transaction. In fact, the state had converted the Sales Contract into what was effectively an option contract. The state's offer was contingent on the state's obtaining from two towns approval for the acquisition by Eminent Domain. The Sales Contract stated that "in the event buyer is unable to secure approval for the acquisition by eminent domain by the towns, the closing date shall be postponed until approval is acquired." Under the plain language of the Sales Contract proposed by the state, the Trustee would have bound himself to sell to the state, but the state would be required to buy only if it was able to satisfy its contingency. In essence, the state proposed an option contract. This was unacceptable to the Trustee. Also, notwithstanding my very clear communication to the state that the Trustee was not willing to include as part of this transaction a conveyance of the Trustee's rights to the KI Branch (but was willing to do so separately), the Sales Contract prepared by the state would have required the Trustee to release certain rights and/or make certain agreements with respect to the KI Branch.

The form of your Sales Contract would have been unacceptable even in the absence of a competing offer with a purchase price that is \$133,500 higher. That the state would propose those terms after a ten week delay, and after it knew that the Trustee had the Competing Offer in his hands is incredible. The bottom line is that if the state had been willing to bind itself by entering into a commercially reasonable contract at any reasonable time after February 7, then it would have minimized the risk of being outbid and would have eliminated the possibility of an intervening higher offer. Instead, the state has refused to commit itself to the February 7 deal to this very day. It is worth repeating that the Buyers never even expressed an interest in the Corridors until April 21.

Finally, the assertion in your e-mail that the state has partially performed on a "package deal" is specious. The state purchased the Sherman to Patten line at the price it did – \$120,000 – because the Trustee had the property under contract to another party at that price and the state did not want to lose the property. The state's coming forward with a matching bid did not add any value to the bankruptcy estate. In fact, the Trustee would have netted more money if he had closed with the original buyer. The Trustee did not require the state to buy the Sherman to Patten line, and offered the same "low" price for the Corridors whether or not the state closed on the Sherman to Patten line.

The Trustee tried diligently over a 2 year period to enable the state purchase the Corridors, but the state's actions and inactions have created a situation in which the only way to accomplish that result is for the state to bid more in compliance with the established procedures.

Very truly yours,


Roger A. Clement, Jr.

RAC:mjh

Enclosure

cc: James E. Howard, Trustee
Richard M. Gottlieb
Correspondence Subfile
Excluded Real Estate Subfile

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB 1043 (Sub-No. 1)

MONTRÉAL, MAINE & ATLANTIC RAILWAY, LTD.--
DISCONTINUANCE OF SERVICE AND ABANDONMENT--
IN AROOSTOOK AND PENOBSHOT COUNTIES, MAINE

REBUTTAL VERIFIED STATEMENT OF JAMES N. HELLER
AND JOHN SCHMITTER

James N. Heller and John Schmitter hereby submit this Rebuttal Verified Statement. Mr. Heller's business address is Hellerworx, Inc., 4803 Falstone Avenue, Chevy Chase, MD 20815. Mr. Schmitter's business address is KEP LLC, 16877 E. Prentice Circle, Centennial, CO 80015. Messrs. Heller and Schmitter are consultants whose practices are concentrated in rail transportation matters, including rail traffic projection issues and analysis of economic trends and issues affecting rail transportation. Their respective resumes, describing their experience and qualifications for the assignment referred to below, are attached as Exhibits A and B.

Montreal, Maine & Atlantic Ry., Ltd. ("MMA") has retained Messrs. Heller and Schmitter in connection with the application by MMA to abandon approximately 233 miles of line (the "Abandonment Lines") in Penobscot in Aroostook Counties, Maine. More specifically, MMA has asked Messrs. Heller and Schmitter to review the evidence and arguments submitted in the abandonment proceedings and to respond to certain arguments made by parties opposing the abandonment. In order to do so, they have reviewed and relied upon the abandonment application and verified statements filed with

the application, the protests and verified statements filed in opposition, information produced in discovery, information provided by MMA and their own independent research.

Messrs. Heller and Schmitter have drafted a report that is attached hereto as Exhibit C. For the reasons stated in the report, they have reached several conclusions, including the following:

1. The carloads handled and revenues earned by MMA for rail service on the Abandonment Lines has in the past followed, and would continue in the future, absent an abandonment, to closely follow the same trend as GDP and housing starts in the Northeast.

2. MMA does not have any realistic chance of increasing its market share or increasing its revenues on the Abandonment Lines other than increases that are consistent and parallel with GDP and housing starts.

3. Carloads and revenues on the Abandonment Lines may eventually reach but are unlikely to exceed pre-recession levels and are unlikely to sustain profitable operations on the Abandonment Lines.

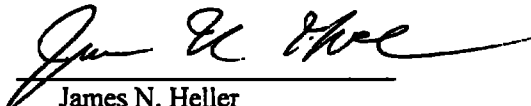
VERIFICATION

State of ~~New~~ Maryland

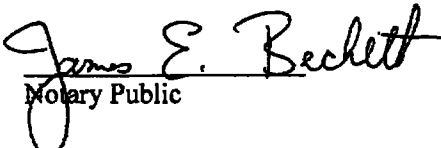
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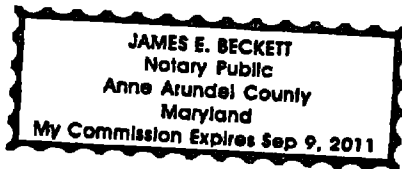
County of Montgomery

I, James N. Heller, being duly sworn, depose and state that I have been retained by Montréal, Maine & Atlantic Railway, Ltd. to analyze certain issues relating to its pending abandonment proceedings, that I have examined all of the statements contained in the foregoing Rebuttal Verified Statement and that all such statements are true and correct to the best of my knowledge and belief.


James N. Heller

Subscribed and sworn to
before me this 20 day of
May, 2010


Notary Public



VERIFICATION

State of Colorado

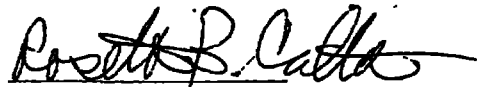
ss:

County of Arapahoe

I, John Schmitter, being duly sworn, depose and state that I have been retained by Montréal, Maine & Atlantic Railway, Ltd. to analyze certain issues relating to its pending abandonment proceedings, that I have examined all of the statements contained in the foregoing Rebuttal Verified Statement and that all such statements are true and correct to the best of my knowledge and belief.

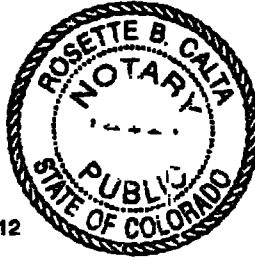

John Schmitter

Subscribed and sworn to
before me this 20th day of
May, 2010



Notary Public

My Commission Expires 12/29/2012



**RESUME OF
JAMES N. HELLER**

HELLERWORX, INC.
4803 Falstone Avenue
Chevy Chase, Maryland 20815
Phone 301-654-1980
Fax: 301-718-1878
Mobile: 202-425-3524
Email: jamie@hellerworx.com

Current Position

Jamie Heller is the founder and president of Hellerworx, Inc. Hellerworx was developed to provide strategic and economic consulting services to shippers, transportation companies and energy concerns. Mr. Heller is an expert in energy, environmental and transportation issues. His specialties include energy market analysis, transportation market analysis, energy property valuation, and litigation support. Mr. Heller has served as an arbitrator, and as an expert witness before various state commissions, federal district and state courts, arbitration panels in the U.S. and overseas, the Surface Transportation Board and the Federal Energy Regulatory Commission. He has made numerous speeches and presentations before various conferences and seminars in the U.S. and abroad. His comments have appeared in various trade publications.

Transportation Related Consulting Specialties

Strategic planning. Conducting market assessments and forecasts. Negotiating fuel and transportation agreements. Estimating transportation costs. Fuel price and transportation rate forecasting. Siting new facilities. Performing acquisition analyses. Evaluating equipment purchases. Providing litigation and regulatory support. Transportation procurement planning. Transportation management studies.

Prior Professional Experience

- **PA Consulting (October 2000-July 2002). Senior Partner.** As Senior Partner within the PA Management Group worked on launching the Environmental and Resource Analytics practice within PA. The practice provided strategic and analytical services to clients in the electric generation, coal and transportation markets; performed various studies and modeling activities related to compliance with environmental regulations; and conducted environmental risk assessments. The principal areas of focus were environmental compliance with Clean Air Act standards, providing fuel and environmental analyses in support of electric generating unit asset acquisition and financing activities, and a major effort to support Firestone Tire in its dispute with Ford Motor Company and NHTSA.
- **Hagler Bailly (October 1998-October 2000). Senior Vice President.** Served as head of Hagler Bailly's fuels and environment practice area and an expert in coal, energy, and

Hellerworx

Resume of James N. Heller

transportation issues. His activities supported the firms forecasting and analysis of electric power, fuel and transportation markets and various clean air compliance issues. In October 2000, PA Consulting purchased Hagler Bailly.

- **Fieldston Company, Inc. and Fieldston Publications, Inc. (1981-1998). Founder and President.** Founded The Fieldston Companies in 1981 to provide energy and transportation consulting services to the energy supply, transportation and electric utility sectors. The 60+ person staff provided expert assistance to the fuels supply, transportation and electric generation industries in hundreds of commercial matters. The publication staff developed and published leading business periodicals in the coal, rail transportation and environmental fields. A joint venture company, Fieldston Transportation Services, provided rail transportation and railcar maintenance services to various shippers and short line rail carriers. In 1998, Mr. Heller sold the consulting and publishing companies to Hagler Bailly, and the transportation services company to DTE.
- **Teknekron, Inc. of Berkeley, Calif. (1979-1980). Senior Analyst.** Strategic planning, market analyses, rail merger studies, transportation market analysis and rate estimation, plant siting, and public policy development.
- **Energy and Environmental Analysis, Inc. (1975-1979). Director of Management Studies.** Directed coal market and transportation studies for railroads and coal producers. Conducted economic evaluation of air and water regulations. Developed energy efficiency plans. Clients included U.S. Department of Energy, Executive Office of the President, U.S. Presidential Commission on Coal, U.S. Congress Office of Technology Assessment, and various coal producers.
- **Office of Water Quality Planning and Standards (U.S. Environmental Protection Agency) (1972-1975). Section Chief.** Developed and promulgated industrial water pollution control guidelines.

Books

James N. Heller and Charles A. Mann. *Coal and Profitability: An Investor's Guide*. McGraw-Hill, 1979.

James N. Heller. *Coal Transportation and Deregulation: An Impact Analysis of the Staggers Act*. Serif Press and the Energy Bureau, 1984.

Education

Harvard Business School — Master of Business Administration, 1972

Northwestern University — Bachelor of Science, Electrical Engineering, 1970

Honors

Member, Eta Kappa Nu and Tau Beta Pi Engineering Honorary Societies

Resume of James N. Heller

Selected Relevant Experience

- Assisted a short line in bankruptcy proceedings with regard to the cost consequences of diverting paper and chemical traffic over various routes.
- Assisted a short line carrier in its dispute with a Class I carrier related to the economic impact of traffic diversions of various products from an existing route over the short line to alternative routes.
- Assisted a new generator in determining the valuation of a branch line from which traffic might be diverted.
- Assisted a Canadian shipper in determining the economic consequences of diverting traffic from existing light density lines.
- Assisted a western short line carrier in assessing asset valuation as part of a dispute over a potential breach of contract with a Class I carrier
- Assisted a customer with rail line valuation as part of a contract termination
- Performed market analysis work for various carriers and shippers
- Developed market analysis for proposed new western rail carrier

Resume of John J. Schmitter

KEP LLC
16877 E Prentice Cir
Centennial, CO 80015
303.862.4453
john@kepllc.com

Current Position

John Schmitter is the founder and president of KEP LLC. KEP LLC was developed to provide strategic, management and economic consulting services to industrial companies, energy producers, government agencies, retailers and transportation companies. Mr. Schmitter is an expert in transportation issues. His specialties include transportation markets, pricing, yield management and competitive analysis, railroad operations, multi-modal freight planning, railcar fleet planning and management, transportation procurement strategies, education and expert witness testimony. Mr. Schmitter has worked with clients in many industries. He has made numerous speeches and presentations before various conferences and seminars and his comments have appeared in various trade publications.

Mr. Schmitter is also Adjunct Professor of Supply Chain Management at the Daniels College of Business, University of Denver.

Consulting Specialties

Strategic planning. Transportation procurement. Transportation management and organization studies. Negotiating transportation agreements. Transportation rate forecasting. Railcar fleet acquisition, management and maintenance planning. Railroad operations and service planning.

Prior Professional Experience

DTE Rail Services, Inc. (1996-2006). Vice President – Business Development. Launched and built DTERS' railcar tracking software and services business and helped develop its railcar maintenance management and software business, integrating it with the company's railcar repair operations. Activities included working with clients to develop railcar maintenance and fleet management strategies, transportation organization assessments, rail rate negotiation and support and shortline railroad development.

Southern Pacific Transportation Company (1991 – 1996). Managing Director – Metals and Ores Business Group. As Managing Director, Metals and Ores Business Group, developed business strategy, negotiated numerous complex rail and rail/truck rate contracts, developed and implemented strategies for acquisition and utilization of several railcar fleets and service plans for each business. Served also as Director – Non-Ferrous Metals and Ores and Director National Accounts. Developed business strategies and negotiated rates on numerous commodities including metals and many types of chemicals

Hub Group (1989-1991). President – Philadelphia. As head of the Philadelphia office, launched the business and developed a customer base. Developed intermodal and truckload plans and negotiated contracts with rail and truckload carriers.

Jones Truck Lines, Inc. (1984-1989). Director Marketing Services. As Director of Marketing Services for this regional LTL carrier, Mr. Schmitter had responsibility for all pricing, rate, tariff and cost management. Developed and implemented marketing strategies and conducted major negotiations with clients. As National Account Manager, developed business and negotiated agreements with large accounts.

Conrail (1977-1984). Intermodal Market Manager, Manager, Service, Equipment and Facilities Planning, Trainmaster. As Intermodal Market Manager, developed and implemented marketing and pricing strategy for a large portion of Conrail's intermodal business. Responsible for pricing and rate negotiations, negotiated numerous agreements with customers. As Trainmaster managed all aspects of a large industrial and road territory

Education

The Pennsylvania State University – Master of Business Administration, 1977
Northeastern University – Bachelor of Science in Business Administration, 1975

Professional Affiliations

American Society of Transportation and Logistics - CTL

Selected Relevant Experience

- Served in various marketing and sales positions (including managing director of a major business unit) for two Class I railroads where preparing revenue forecasts and achieving those forecasts and developing and executing pricing strategies were key responsibilities
- Assisted a short line carrier in its dispute with a Class I carrier related to the economic impact of traffic diversions of various products from an existing route over the short line to alternative routes
- Performed market analysis for various shippers and receivers

Rebuttal Report of James Heller and John Schmitter

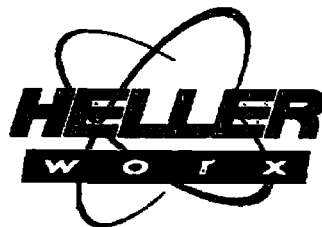
STB DOCKET NO. AB-1043 (Sub-No. 1)

**MONTREAL, MAINE & ATLANTIC RAILWAY, LTD –
DISCONTINUANCE OF SERVICE AND ABANDONMENT – IN
AROOSTOOK AND PENOBSCOTT COUNTIES, MAINE**

Prepared for:

**MONTREAL, MAINE & ATLANTIC
RAILWAY, LTD**

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May 25, 2010

Rebuttal Statement of James Heller and John Schmitter

1. Introduction

The purpose of this statement is to estimate the MMA traffic and revenue levels that would occur on the abandonment lines under the assumption that the lines are not abandoned. For purposes of this analysis, we have relied on the protests and verified statements filed by opponents of the abandonment, materials received in discovery in this proceeding, information supplied by MMA and our independent research and experience.

2. MMA Traffic - Overview

The majority of MMA traffic is comprised of two commodity groups, Wood Products (STCC 24) and Paper Products (STCC 26). These two product groups make up 80 percent of the carloads and two thirds of MMA revenue on the abandonment lines as shown in Exhibits HW-1 and 2.

Exhibit HW-1

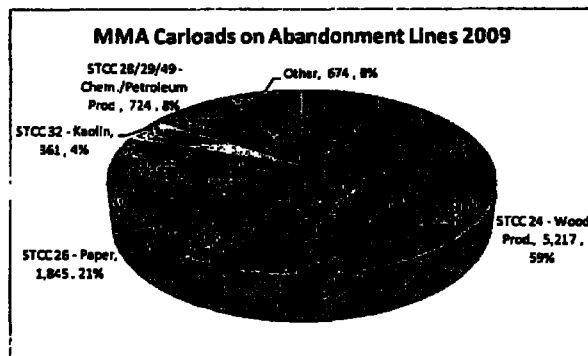
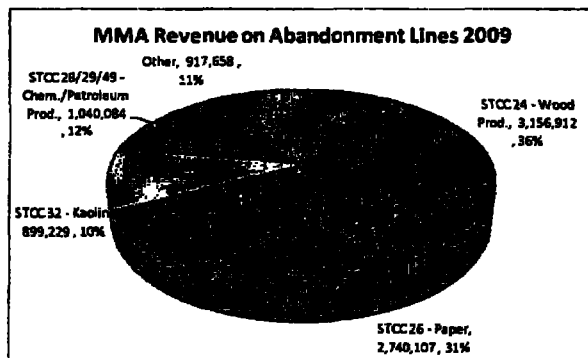


Exhibit HW-2



The majority of the other products carried by MMA on these lines and shown in Exhibits HW-1 and HW-2 are primarily kaolin and chemicals which are raw materials mostly used in the production of paper.

3. Wood Products

MMA wood products carloads and revenue historically are closely correlated with housing starts ("Housing Starts" in the Northeast Region as shown in Exhibits HW-3 and HW-4.

Exhibit HW-3

Exhibit HW-4

The majority of the STCC 24 carloads and revenue on the abandonment lines are logs or woodchips, raw materials moving into the production of lumber, other finished wood products or paper (see Exhibit HW-5). These commodities move mostly short haul and generally have low margins for the railroad due to source and other competition which limits MMA's pricing power.

Exhibit HW-5

The wood products business is also concentrated with three customers comprising 86 percent of the carloads. From 2003 – 2009, one customer, Irving Woodlands accounted for 50 percent of wood products carloads shipped on the abandonment lines (see Exhibit HW-6). Of the 2009 top ten wood products customers, all except Fraser, Louisiana Pacific and Huber Engineered Woods ship mostly logs or wood chips on the MMA abandonment lines.

Exhibit HW-6

Wood products carloads on the lines declined substantially from 2007 to 2009. In fact, revenue has been on a steady decline since 2005. Because MMA carloads are closely related to housing starts, the economic decline which affected housing starts also affected MMA carloads of wood products on the abandonment lines.

The longer term decline in revenue is an indication that there is source and modal competition for the logs and woodchips businesses. MMA, in fact, views the log and wood chip traffic as incremental. Revenue on average for these two commodities only covers the Off Branch costs by a small margin. Revenue on shipments of logs does not even cover the Off Branch costs (See Exhibit HW-6A). On Branch costs would have to be added to determine total costs but clearly logs and woodchips are marginal businesses for MMA on the abandonment lines.

Exhibit HW-6A

Despite the small margins, MMA competed to retain as much of the market as possible during the economic decline. This enabled [] and other customers on the line to compete with other log and wood chip sources closer to some markets. Irving's expert, Robert Pinette, confirms that there is significant competition for the wood chip and log business from other forested areas closer to major population centers (V.S. Pinette at 13). Pinette also states that Irving would lose [] without rail service at something approaching the current rates (V.S. Pinette at 8). This confirms the limited pricing power of the MMA.

Irving's rail traffic projection for 2010 is about [] outbound cars and [] inbound cars (V.S. Pinette at 11). This is slightly higher than the 2009 levels. Pinette indicates that "if service were efficient, reliable, and economical, Irving Woodlands could generate an additional [] cars per year over the 2010 projection above." (V.S. Pinette at 11). The evidence suggests, however, that MMA could only generate more carloads by reducing prices, thereby allowing Irving to penetrate markets for fiber more distant from its harvesting sites. Since the log and woodchip business is marginally profitable for MMA, there is no room to reduce MMA's margins and there is no indication in Irving's filings (or those of the other log and wood chip customers) that the producers would reduce their own margins in order to absorb additional transportation costs and increase market share

relative to competitors that have closer sources of fiber. Therefore it is our opinion that MMA carloads of logs and woodchips will simply maintain the historical relationship to Housing Starts in the Northeast Region.

Fraser Timber ships finished lumber with about half of 2009 MMA rail carloads moving to Maine and about 80 percent to Maine, Connecticut and Massachusetts. Historically from 2003 – 2009 rail carloads moved to a wider set of destinations but concentrated mostly in the Northeast. Fraser Timber's overall level of carloads shipped on MMA followed the general pattern of MMA wood products carloads, increasing from 2003 through 2007 then dropping off sharply. Fraser made no statements indicating that future shipments would vary significantly from historical patterns which have closely followed Housing Starts.

Louisiana Pacific converted its plant at Houlton, ME to produce Laminated Strand Lumber (LSL). They are currently shipping this product nationwide. Previously this plant produced Oriented Strand Board (OSB). But as OSB demand grew, Louisiana Pacific (and its competitors) built additional plants around the country. As more plants were built the Houlton plant evolved from serving a national market to a regional market which was more suited to truck transportation thus gradually reducing the carloads shipped on MMA. The Houlton plant eventually became less competitive as new more efficient plants were built that could serve the same market (V.S. Turner at 2-5).

Louisiana Pacific shipped [] carloads via MMA in 2009. Turner indicates that this represents about []% of shipments from Houlton (V.S. Turner at 4) and projects that shipments over the next three to five years could ultimately reach [] to [] carloads at maximum production (V.S. Turner at 5-6). This is only about the number of carloads that Louisiana Pacific shipped in [].

Turner also says that "demand for wood-based building products, including engineered wood products such as LSL, is a direct function of the demand for new residential construction, and in the long run the demand for new housing is the product of demographic forces that have not fundamentally changed." (V.S. Turner at 6). We agree with his conclusion about the market and in our opinion Louisiana Pacific production will increase consistent with Housing Starts over the next five years. Assuming that Louisiana Pacific continues to ship about [] percent of its production via MMA, then carloads from Louisiana Pacific will increase in line with MMA's general level of wood products carloads which also match Housing Starts for the Northeast Region.

Louisiana Pacific indicates that there are currently only two plants in North America producing LSL (V.S. Turner at 8). This is not surprising since this is a relatively new product. However, if the market accepts the product then it is likely that, as happened with OSB, more plants will be built both by Louisiana Pacific and/or its competitors. The market area for the Houlton plant will become increasingly regional, decreasing rail shipments and increasing truck shipments. Long term MMA market share will decline and this plant in the long run is not likely to be a major source of new revenue for MMA.

Huber Engineered Woods (Huber) ships finished products and receives inbound shipments of chemicals via MMA. Huber's witness, Alan Weber, states that both its inbound shipments of raw materials and its outbound shipments are directly related to the U.S. Housing Starts (V.S. Weber at 3). In line with its forecast for Housing Starts, Huber projects a gradual increase in outbound carloads via MMA to [] by 2013 (Weber V.S. at 4). This is about what they shipped outbound in []. Huber's filing and the Verified Statement of its expert, Alan Weber both indicate that Huber's MMA carload shipments will continue their historical relationship to Housing Starts and we agree with this conclusion.

As with carloads, MMA wood products revenue on the abandonment lines is highly correlated with U.S. Housing Starts in the Northeast Region.

None of the filings by opponents to the abandonment indicated that MMA could raise prices substantially on existing traffic over the abandonment lines. Irving's witness, Pinette also indicated that there was source competition for logs and wood chips constraining MMA prices on this traffic (V.S. Pinette at 8).

The graph below (Exhibit HW-7) shows the relationship between the year to year percent change in carloads and revenue per car for wood products on the abandonment lines from 2004 – 2009. Focusing on the years 2004 – 2007, except for 2005, there is an inverse relationship between carloads and revenue per car providing another indication that the MMA wood products business on the abandonment lines is price sensitive. As prices increase volume drops and vice versa.

Exhibit HW-7

There is nothing in the record indicating that MMA would have the ability to substantially raise prices on wood products traffic on the abandonment lines without losing market share. Therefore, were the lines to remain operational, MMA's strategy

would likely be to maintain its current pricing strategy and MMA's wood products revenue on these lines would likely retain their historical relationship with Housing Starts in the Northeast Region.

3.1. Forecast of Wood Products Carloads and Revenue on Abandonment Lines

Wood products represent 59 percent of MMA carloads and 36 percent of MMA revenue on the abandonment lines. Historically wood products carloads and revenue on the abandonment line correlate closely with Housing Starts in the Northeast Region. Based on examination of the record in this proceeding and our experience with railroad traffic MMA will not increase its market share of this business over the next five years without meaningful price reductions. Such price reductions would further damage the economics of the abandonment lines, and make no sense.

In addition the market for wood products will prevent MMA from achieving any major increases in price on its existing business without losing market share. At best, the historical relationship between MMA carloads and revenue and Housing Starts in the Northeast Region will continue if the lines are not abandoned. Therefore our forecast of MMA wood products carloads and revenue is based on the forecast for Housing Starts in the Northeast Region.

Using historical U.S. Census Bureau data and a forecast for Housing Starts for the Northeast Region from the National Association of Home Builders we have projected MMA wood products (STCC 24) carloads through 2015 (Exhibit HW-8).¹ Carloads will gradually increase to about [] per year (approximately the [] level) until 2013 and then remain relatively flat through 2015.

Exhibit HW-8

¹ Historical Housing Starts Data for Northeast Region are from U.S. Census Bureau. Forecast data for 2010 and 2011 are from the National Association of Home Builders (NAHB) April 2010 Forecast. Northeast Region Housing Starts forecast for 2012 – 2015 was developed using the same annual growth rate for Total U.S. Housing Starts from the NAHB June 2008 Long Term Housing Starts Forecast.

MMA revenue from wood products on the abandonment lines will gradually increase to about \$[] million/year (slightly higher than []) and stay relatively flat through 2015 (Exhibit HW-9).

While we have forecast that MMA's wood products traffic will increase at the pace of the Housing Starts for the Northeast Region this forecast is relatively optimistic. MMA's fourth largest customer in 2009, Fraser Timbers Limited, is in bankruptcy proceeding (Protest and Comments of Irving Woodlands LLC, Irving Forest Products, Inc, Fraser Papers, Inc, Fraser Timber Limited and Katahdin Paper Company LLC at 4). Fraser Timbers Limited shipped [] carloads in 2009 accounting for [] percent of MMA wood products shipments on the abandonment lines. One of its sawmills on MMA in Ashland, ME is currently shut down due to market conditions (Protest and Comments of Irving Woodlands LLC, Irving Forest Products, Inc, Fraser Papers, Inc, Fraser Timber Limited and Katahdin Paper Company LLC at 5). The bankruptcy of one of its larger wood products customers is an indication of the risks that MMA is incurring associated with continued operation of the abandonment lines.

Exhibit HW-9

4. Paper Products

21 percent of MMA carloads and 31 percent of MMA revenue on the abandonment lines are comprised of paper products. [] percent of the MMA paper products carloads and [] percent of MMA paper products revenue on the abandonment lines comes from one customer, Fraser Papers, Inc. (Fraser) in Madawaska, ME Fraser ships mostly printing paper on MMA (See Exhibits HW-10 and HW-11)

Exhibit HW-10

Exhibit HW-11

The Madawaska plant is not on the abandonment lines but traffic from the plant moves over these lines to other locations on MMA and to connecting carriers.

The volume of Fraser's shipments on MMA (and thus overall MMA paper shipments) are affected by two key factors, 1) the general state of the paper market and, 2) rail competition with CN.

As the following graphs indicate (See Exhibits HW-12 and HW-13), the overall trend for paper manufacturing has been a long term decline with increased use of electronic forms of communication. In a recent article in Rail Business, Neil Ward, communications director for the Forest Resource Association, said "There are certain products on the

paper side that seem to be in a systemic decline. Newsprint is the obvious example, but fine papers and writing papers are not likely to experience growth and seem to be experiencing shrinkage in a historical sense...”²

In several parts of its Annual Information Form for 2009 Fraser indicates its own concern about a long term decline for paper: “The paper sector in general remains subject to the threat of substitution from electronic communication media as advertisers and consumers migrate to the internet and other forms of digital information, communication, storage and retrieval.” (Fraser Papers, Inc. Annual Information Form, March 24, 2009, P. 11-12).

“We have experienced and may continue to experience decreased demand for some of our products as a result of electronic substitution of these products. The growing use of electronic transmission and document storage alternatives has affected market demand for printing and writing papers. U.S. uncoated freesheet demand declined steadily from 2003 through 2008, reflecting the impact of electronic substitution, among other things. The growth in the use of plain paper fax machines and small office printers has slowed dramatically as e-mail deliveries and the electronic storage of documents have become more widely accepted. The growth of internet directories could impact the use of paper-based directories and certain of our specialty packaging grades are subject to substitution by non-paper based competitive products (Fraser Papers, Inc. Annual Information Form, March 24, 2009, P 18).

“In addition, our pulp business must compete with an increasing supply of, and in some cases customer preference for, foreign sources of pulp such as eucalyptus pulps produced in Asia and South America. If we are unable to develop new sources of demand to effectively respond to electronic substitution and changing customer preferences, our financial position and results of operations may be adversely affected.” (Fraser Papers, Inc. Annual Information Form, March 24, 2009, P 18).

Exhibit HW-12

²Argus Media Ltd, Rail Business Volume 16, 15, 12 April 2010, P1 and 6.

Exhibit HW-13

From 2003 through 2006, MMA's paper products carloads and revenue generally followed the trend of Maine GDP for paper, an overall indication of the paper market. From 2007 through 2009 MMA carloads and revenue showed more volatility than the Maine GDP for paper. This variation was due to the dynamics of rail competition with CN for a portion of Fraser's rail shipments. Fraser's Madawaska mill is served by CN in addition to MMA. About [] percent of the carloads move to the LMS Warehouse in Hampden, ME. LMS is located on the MMA, so MMA will likely continue to handle this traffic. The remaining [] percent of the rail traffic from Fraser's mill could move via CN or MMA (V.S. Sass at 4).

Since at least 2003 it has been Fraser's practice to request bids from both CN and MMA each year for each destination (lane). Fraser then generally awards each lane to the carrier that submitted the lowest price. There is no guaranty of volume. The carrier awarded the lane handles any rail shipments in that lane for the year. Actual volume will vary with Fraser's sales and shipments. The result is extreme traffic volatility and no assurance of long term volumes.

As the following graph (HW-14) shows, MMA and CN have alternated handling the competitive lanes. CN handled the majority of the competitive rail traffic from 2003 through 2005. In 2006 and 2007, MMA regained the traffic and lost it again in 2008. In 2009, the business was split about evenly, but there were fewer shipments than in 2008. The record in this proceeding contains no statements indicating that Fraser will discontinue the bidding process, so we expect the annual bidding process to continue should the abandonment not be approved. This process should also prevent MMA from increasing its prices substantially.

Exhibit HW-14**4.1. Forecast**

To develop a forecast for paper traffic on the abandonment lines, we assumed that over the next five years, MMA would win the competitive bidding with CN each year which is a very optimistic scenario.

Therefore the total carloads and revenue should generally follow the overall trend of paper demand in the U.S. as the basis for the forecast of overall demand. The February 2010 Pulp and Paper Products Council (PPPC) forecast of North American demand for mechanical coated paper (the PPPC category most closely matching the type of paper produced by Fraser at Madawaska) is the forecast that we relied upon (Exhibit HW-15 and HW-16). PPPC forecasts a 3.6 percent increase in demand for 2010, 1.6 percent in 2011 and a decline of 2.4 percent for 2012. To develop a forecast for 2013 – 2015, we used the average PPPC forecast growth rate for 2010 – 2012 of one percent per year.

Exhibit HW-15

Exhibit HW-16

Based on this forecast, carloads of paper will increase to about [] in 2011 and after a decline in 2012, gradually reach about [] in 2015. Revenue will follow a similar pattern reaching about \$[] million in 2011. After a small decline in 2012, revenue will reach about \$[] million again in 2015. Carloads and revenue between 2010 and 2012 will grow very slowly consistent with North American demand for the type of paper produced by Fraser.

Because paper demand is projected to be relatively flat over the next five years, so will MMA carloads and revenue for paper. There are no statements in the record from Fraser indicating that they are taking actions that will increase market share thereby causing Fraser's shipments to increase faster than the overall demand for paper. In fact in addition to the limited market growth, the annual bidding process will constrain MMA from substantially increasing prices on this business.

While the projection for carloads and revenue indicate that MMA will not achieve the [] levels (the highest point between 2003 and 2009) by 2015 this forecast is still relatively optimistic. First, it assumes that MMA traffic will increase at the rate of overall North American demand beginning from 2009, a year in which MMA was awarded the bulk of the competitive rail traffic by Fraser. It also assumes that MMA will retain the contract through 2015 which is unlikely. In fact this business moved from MMA to CN and back to MMA between 2006 and 2009 so it is possible that MMA would lose the competitive rail business during some years between 2010 and 2015.

Second, Fraser Papers, Inc. has recently been in bankruptcy in the U.S. and Canada. The assets of Fraser Papers, Inc., including the Madawaska mill are being acquired by Twin Rivers Paper Company LLC (Twin Rivers) (Protest and Comments of Irving Woodlands LLC, Irving Forest Products, Inc, Fraser Papers, Inc, Fraser Timber Limited and Katahdin Paper Company LLC at 4). The sale was completed as of April 29, 2010 (Fraser Papers Press Release 04.29.2010).

Twin Rivers is a new company, launched on April 28, 2010 (Twin Rivers Website <http://www.twinriverspaper.com/content/corporate/history-2194.html>), accessed May 16, 2010). This forecast of MMA paper carloads assumes that, although Twin Rivers will be subject to the same market and operating conditions as Fraser, it will be able to generate an operating profit large enough to justify continued reinvestment in the mill where Fraser could not. Since Fraser/Twin Rivers represents such a large portion of the revenue on the abandonment lines in 2009 the health of this customer becomes an important factor in MMA's strategic planning.

In its 2009 Annual Information Form Fraser indicates concern about the market and the company's future: "Any prolonged or severe weakness in the market for any of our principal products would adversely affect our business, financial position, results of operations and cash flows. Besides impacting our revenues, cash flows and earnings, weakness in the market prices of our core products will also have an effect on our ability to attract additional capital to finance our operations, the cost of that capital and the value of our assets." (Fraser Papers, Inc. Annual Information Form, March 24, 2009, P. 15)

MMA's dependence on a single, financially unstable customer emphasizes the inherent risks associated with further line investments.

5. Kaolin

About [] percent of the 2009 carloads and [] percent of the 2009 revenue on the abandonment lines is Kaolin, a raw material used in the production of paper.

Most of this product moves as bridge traffic over the abandonment lines to Fraser's paper mill in Madawaska. Kaolin shipments inbound to Fraser at Madawaska have the same competitive options as the outbound paper and, historically Fraser puts this business to bid annually. MMA has retained the business from 2003 through 2009 but all of it could move via CN (See Exhibit HW-17).

Exhibit HW-17**5.1. Forecast**

Given that Fraser's use of Kaolin is dependent on the production of paper, we used the same forecast methodology as for paper and assumed that MMA would retain the business in the annual bidding process through the five year period from 2010 – 2015 (see Exhibits HW-18 and HW-19).

Exhibit HW-18

Exhibit HW-19

MMA will move about [] to [] carloads per year of Kaolin through 2015. Revenue will range from about \$[] to \$[] per year through 2015.

6. Chemical/Petroleum Products

MMA handles a variety of chemicals/petroleum products on the abandonment lines. Some of these commodities are used in the production of paper or lumber products but the majority (73%) are diesel fuel, petroleum gas, fuel oil and various fertilizers. The volumes and revenues associated with these chemicals are shown in Exhibits HW-20 and HW-21)

Exhibit HW-20

Exhibit HW-21**6.1. Forecast**

Chemical/petroleum commodities should grow from 2009 consistent with the overall outlook for manufacturing in Maine. Using the projections of total manufacturing GDP for Maine produced by Southern Maine University as the basis for the forecast of manufacturing in Maine, the results are shown in Exhibits HW-22 and HW-23. Based on the overall economic projections for Maine, MMA should handle between [] and [] carloads of these commodities per year between 2010 and 2015 and generating \$[] million to \$[] million in revenue.

Exhibit HW-22

Exhibit HW-23

7. All Other Traffic

The four major commodities handled by MMA on the abandonment lines, wood products, paper, kaolin and chemicals represent 92 percent of carloads and 89 percent of the revenue on the abandonment lines. The remaining traffic covers many commodities with the largest being food products, waste/scrap, grain and non-metallic minerals. Nothing in the record indicates that the volumes of these commodities will grow faster than the Maine economy, so we project these commodities to grow at the same rate as the overall manufacturing GDP for Maine.

Between 2010 and 2015 MMA we project that MMA will handle on the abandonment lines [] carloads per year of commodities other than wood, paper, kaolin or chemicals/petroleum products generating \$[] million to \$[] million in revenue per year (See Exhibits HW-24 and HW-25)

Exhibit HW-24

Exhibit HW-25**8. Total Forecast**

Our forecast of carloads and revenue by year for the abandonment lines by major commodity group are summarized in Exhibits HW-26 and HW-27. The graph shows our forecast of total carloads and revenue on the abandonment lines by year. If the abandonment is not approved and the lines continue in operation we project that total carloads will grow to about [] and total revenue to \$[] million in 2012. Both would remain relatively flat through 2015 consistent with the overall Maine economy and industry projections for Housing Starts and paper demand.

Exhibit HW-26

Exhibit HW-27

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB 1043 (Sub-No. 1)

MONTRÉAL, MAINE & ATLANTIC RAILWAY, LTD.--
DISCONTINUANCE OF SERVICE AND ABANDONMENT--
IN AROOSTOOK AND PENOBSCOT COUNTIES, MAINE

REBUTTAL VERIFIED STATEMENT OF ROBERT E. HOLLAND

My name is Robert E. Holland, and I was retained by Montréal, Maine & Atlantic Ry., Ltd. ("MMA") to assist it in the preparation of an application to abandon approximately 233 miles of line located in Penobscot and Aroostook Counties, Maine. The application was filed with the Board as of February 25, 2010. I submitted a Verified Statement that was filed with the application. The purpose of this Rebuttal Verified Statement is to respond to certain portions of the testimony and arguments filed by parties participating in the abandonment proceedings. Specifically, I will address testimony and arguments concerning alternative transportation issues filed on behalf of Irving Woodlands, Irving Forest Products, Fraser Papers, Huber Engineered Woods and Louisiana-Pacific Corp.

Truck to Rail Ratio

Several of the parties have suggested that the truck to railcar ratio that I estimated was too low and that the Board should use the 4 to 1 ratio that it has adopted in other abandonment cases. None of the parties suggesting the use of a 4 to 1 ratio has provided any details or any critique of my analysis. I calculated a truck to railcar ratio of 1.62 for a

substantial portion of the traffic originating or terminating on the Abandonment Lines, because this traffic consisted of logs and other wood products that are transported in relatively small, older railcars, as described below, and in large, high-capacity trailer trucks. When this 1.62 ratio is factored into a weighted average of all traffic on the line in the Base Year, the ratio for all traffic that would be affected by the abandonment was 2.3 to 1.

In order to verify my original analysis, MMA supplied AAR UMLER car type information for the base year traffic covering Irving Woodland's originations, which consist primarily of logs, wood chips and other wood products. Exhibit REH-1 attached describes the UMLER information. Column A and B contain the origin and destination of the moves. Column C shows the AAR car type code, followed by the car initials in columns D < E. The rows are sorted by origin by destination by high to low carload counts as contained in column G. Using the UMLER code definitions contained in copies of the "Official Railway Equipment Register", each of the major car types used are described in columns H < K. The results indicate that F241 – 50 foot cars and L028 – 60 foot cars are prevalent. Exhibit REH-2 illustrates a typical MMA 14000 series 50 foot car used to haul logs with a capacity of about 3,000 cubic feet with larger ones equaling 5,300 cubic feet. A typical 50 foot logging trailer with the dimensions of 50 feet long x 96" wide with 110" stakes would suggest a cubic capacity on the order of 3,680 cubic feet. On a cube for cube basis the implied truck to rail ratio equals $5,300 / 3,680$ or 1.44.

The ratio calculated earlier is reasonable and is substantiated by a review of the design of the actual equipment used. The stated lading on the bill of lading typically

runs between 50 and 55 tons per the original baseline traffic detail submitted in my Verified Statement. Further, if a 4 to 1 ratio is assumed, then the effective truck lading would be $55 \text{ tons} / 4 = 13.75 \text{ tons}$ per truckload or about 27,500 pounds. This value is substantially below the typical truckload weights of 40,000+ pounds for higher density material. Therefore, if the actual physical characteristics of the railcars and trucks are considered, rather than simply general statements concerning ratios used in other situations, the results produced from my analysis are not debatable. The draft Environmental Assessment issued earlier in this case used the higher truck to rail ratios, in order to be conservative, that were based on a drastically different traffic sample of the Canadian Pacific Railway's line between Montreal and Saint John, N.B. As demonstrated in Exhibits A through D of my Verified Statement, I calculated the exact truck to railcar ratio for each commodity and each customer, and the weighted average, as shown there, was 2.3 to 1. I continue to believe, therefore, that the appropriate truck to railcar ratio for this case is as stated in my Verified Statement.

Irving Woodlands

In connection with the application, I estimated the increase in transportation cost that Woodlands would incur if there were an abandonment and trucks were used in place of rail cars for the transportation of logs and chips. Using information that Woodlands has provided in response to MMA's discovery requests, I have calculated that Woodlands' truck related delivered costs per ton of product are []% higher than rail for the mix of traffic moving over MMA. In other words, in the absence of rail service Irving could provide its products to its customers at a delivered price--the cost of the product plus the cost of transportation--only []% higher.

Exhibit REH-3 contains information received in response to MMA's discovery requests. Columns B through F are Irving's actual data, consisting of (columns B \Diamond F) origin/destination, delivered cost per rail ton, delivered cost per truck ton, and percentage amount. Two tables are shown. Table A displays the data sorted by origin, while table B has the information sorted by destination customer. To the right of Irving's data in each table is the weighted average projected increase in their delivered cost per ton. The per ton delivered cost numbers furnished by Irving had no backup detail, so I was unable to analyze the assignment of cost amounts between and among Woodlands and the various Irving family of related companies. Moreover, for the Saint John, Megantic, Jackman and Bury destinations, transload to truck is required to move the product to final customer destination. This is also true for the Hampden and South LaGrange lanes, in which no traffic moved in the Base Year.

As a general proposition, it is sometimes unclear, at least to me, which Irving entity should be referred to any particular situation. For example, J.D. Irving, Ltd. is shown in the MMA records as a rail customer, but is not a party in these abandonment proceedings. It is not clear whether the Irving facility at St. Leonard, New Brunswick is owned by Irving Forest Products or J.D. Irving, Ltd. or some other Irving entity. I have done my best to refer to the correct entity in this Rebuttal Verify Statement, but they are maybe inadvertent mis-references.

Data obtained from MMA records for the Base Year yielded actual car types for the Irving commodities, which consisted primarily of logs and wood chips. These commodities averaged 55 tons per rail car using the actual cars used to move this traffic. (See Exhibit REH-1) Again from MMA records, an referring to Exhibit REH-3, I

multiplied the number of cars by 55 tons to gain the number of tons carried by rail in the various lanes. Column H of the analysis is the product of the per cent increase in truck costs claimed by Irving times the number of tons carried by rail. Columns J, K, and L provide detail of the differences in rail versus truck for Irving's claimed delivered cost of product in the various lanes.

Column M is the MMA rail rate per car. Column N, "Empirical Irving Truck Rate", is the mathematically derived cost increase attributable to trucking for each 55 ton rail car. I then calculated the truck miles for the various lanes and derived truck hours (Column P) by assigning an average travel speed of 55 mph plus one half hour at the beginning and one half hour at the end of each trip for loading and unloading. Column R shows the cost per truck hour, which is then adjusted by the factor of 1.64 to reflect the fact that an average of 1.64 trucks at 33.5 tons lading is needed to move the equivalent of a 55 ton rail car. I then extrapolated Irving's truck and rail cost values to derive an empirical cost per truck hour. This is accomplished in columns J & AF of REH-3. The algorithm used is based on the difference between the landed truck cost and the additional cost of truck over the rail rate. Adding the current MMA rate back to the difference should equal the truck cost. Then, estimating the hours of transit time (round trip truck hours) times the total number of truck equivalents should equal total truck hour equivalents. Dividing total truck equivalent costs by the truck hours should equal the effective cost per truck hour Irving would be paying.

Using the 1.6 ratio, the truck cost is estimated at \$[] per hour (cell T6). Assuming a 2 to 1 ratio suggests \$[] per hour (cell Y6), while at Irving's 3 to 1 ratio estimated cost per hour is approximately \$[] (cell ad6). Based on my experience,

\$[] is well below what is needed to sustain or attract truck capacity for these types of moves. This analysis affirms that a level of \$[] per truck hour, or even higher, is more appropriate if fuel prices surge again. Of course, the \$[] per hour would decrease even further if a 4 to 1 ratio were substituted in the model. In summary, Irving's argument that truck costs will cause a "huge" impact is not credible.

My analysis is conservative in that it compares rail loadings to truck loadings that could travel over public roads. In reality, there is an extensive system of privately owned logging roads in northern Maine that accommodate much larger and heavily loaded trucks. This system is utilized by Irving and others to move raw forest material for the first portion of every shipment. In the event of an abandonment, Irving might decide to use private roads for greater distances, in order to reach transloading points, than they currently use the private roads in order to reach MMA sidings.

Irving suggests that truck capacity may not be available. In 2004 the State of Maine released a study entitled "Committee to Study New payment Models for the Logging Industry" concluding that Irving Woodlands controls a significant portion of the northern Maine forest market, and as such, could force depressed prices on loggers or truckers. In either case, the result might be that there would be fewer trucks available. Affirming the Maine study, the Rebuttal Verified Statement of Joseph R. McGonigle describes Irving's vast and integrated operations. Irving has its own trucking affiliates and presumably uses some system of intra-corporate pricing that may not be equivalent to the market rates that I used. Whatever the reason, Irving Woodlands' own calculations show only a modest overall percent increase. Even more characteristic is the statement

by Huber in their opposition statement that “logs to their operation come via truck either by public or private roads”.

Woodlands has also contended that it is not feasible to use transloading for distances over [] miles. They point to the use of 225,000 pound trucks on private roads for movements of 30 to 60 miles from the log harvesting areas to rail sidings and count these miles as part of the transloading origin to destination. This is not a correct comparison, however, because Woodlands would be making these private road movements and incurring these costs whether it had rail service or not. Furthermore, Woodlands provides no data or explanation as to why [] miles is the feasibility break point for transloading. In fact, the analysis referred to above shows that trucking movements are economical at greater distances. The 300 mile range referred to in my statement simply takes into account the local distances on MMA. As noted by Mr. McGonigle in his Rebuttal Verified Statement, all of the Irving destinations currently served by MMA are less than [] miles from the origins. I would not advocate intermediate transloads on short distance moves less than 300 miles. The transloads taking place now are to effect origin and destination modal requirements where, for example, the customer does not have a rail siding at its facility.

Further, each of the 4 rail siding locations mentioned by Woodlands is close to public highways. Fort Kent, for example, is contiguous to Route 11 and Route 1, both major highways. Oakfield is contiguous to I-95. The St. Croix siding is approximately 5 miles from Route 11, and Skerry is only 2 miles from Route 11. These two facilities would likely be on Route 11 save for the fact that the MMA right-of-way parallels Route 11 just to the east and west as described above. As described by Mr. McGonigle, the

equipment located at the rail sidings could readily be adapted to use for transloading from private road log trucks to trucks that are permitted on public roads. In addition, given its extensive private road network, Woodlands could, if it wished, use the private roads to run its heavy trucks much closer to existing transload points, such as Van Buren.

Furthermore, Woodlands already uses transloading, particularly when it is necessary in order to reach a customer's facility for final delivery. Customers at Megantic and Bury, for example, require transloading for final delivery from Woodlands.

Woodlands contends that it would lose all of its current business with [] customers and [] of its business with a [] customer if it lost rail service at the 4 sidings on the Abandonment Lines. Unfortunately, Woodlands has not provided any data that we could analyze to test this argument. Given the analysis described above, showing that Woodlands' delivered cost would increase only []%, loss of business to this extent does not seem likely. Furthermore, Irving has numerous alternative sources of logs that could be used for these customers. For example, [], could be sourced from Irving forest lands in New Brunswick. In addition, I note that one of the customers, [], so that a transload operation would appear to be feasible. [] does not have direct rail service, and therefore transloading already occurs in order to accomplish final delivery. Finally, the alleged loss of business with [] should be disregarded completely, because MMA's records indicate that it is not handling any rail business from Irving to []r, and even if it were, Irving has alternative sourcing possibilities for [].

Irving Forest Products

Irving Forest Products does not contend that the cost of alternative service after the abandonment would be too expensive or that it would have any quantified adverse effects on Forest Products. They do argue, however, that they would be left with only one alternative rail route for outbound shipments from Van Buren, Maine and that the route in question--Canadian National through the interchange at St. Leonard, New Brunswick--is "too circuitous". This claim is not supported by the facts. I have prepared Exhibit **REH-4** using rail miles from PC- Rail for several of their higher volume lanes. Columns A and B show the lane pair while columns C and E show the comparative miles for each route listed in Columns D and F. Except for Westfield, MA and Langhorne, PA, the Canadian National route is actually shorter than the likely alternative MMA route, as noted by a value of greater than 100% in Column G. The simple average difference in miles is 64 in favor of the CN routing. This demonstrates that the Canadian National route is certainly not "circuitous" compared to the MMA route. For the reasons described by Mr. McGonigle in his Rebuttal Verified Statement, as outlined below, most of the outbound traffic from St. Leonard goes directly via Canadian National in any event, not to Van Buren.

As described by Mr. McGonigle in his Rebuttal Verified Statement, the convoluted nature of the transportation arrangements and operations of Forest Products make it very difficult to analyze or understand their alternative transportation logistics or costs. Forest Products currently receives [

]. Forest Products converts the logs into lumber or other wood products and, as is relevant to this case, trucks these products from St. Leonard to the MMA reload

operation in Van Buren, where the products are transferred from truck to rail. As Mr. McGonigle explains, the Forest Products transportation decisions for St. Leonard are apparently governed by a long-term agreement between Forest Products and Canadian National, which makes it difficult to analyze the alternative transportation issues. What seems clear, however, is that Forest Products is already using transloading and circuitous routing to a great extent.

Louisiana-Pacific

Louisiana-Pacific has estimated that their outbound transportation costs will increase by approximately \$[] per railcar after abandonment. This calculation is consistent with the analysis that I did, as shown in Exhibit A of my Verified Statement. Exhibit REH-5 displays pivot totals produced directly from data supplied in response to MMA's discovery requests. Labeled Pivot A on the exhibit, the Louisiana-Pacific data shows that between [] and [] percent of the shipments move by rail. Pivot B shows the average distances by each mode, while Pivot C indicates the longest distances incurred for each mode. In contrast to the statement that Louisiana-Pacific cannot truck long distances, the data indicates they in fact do ship long distances by truck, and the data in Pivot C indicates the maximum distances are rising (in excess of [] miles) for each mode. Pivot D indicates that rail shipments represented []% by sales dollar volume for the year 2009.

It is not clear why Louisiana-Pacific finds it economical to use truck to this extent, but part of the answer may be that Louisiana-Pacific passes its transportation costs on to its customers. In addition, there are a number of customers that pick up oriented strand lumber at the Louisiana-Pacific facility and arrange for their own transportation.

Transportation costs, therefore, have only an indirect impact on Louisiana-Pacific's ability to compete in various markets.

Louisiana-Pacific has argued that certain customers prefer lumber in lengths longer than 48 feet and that such lengths cannot be handled by trucks. According to Louisiana-Pacific's discovery data, approximately []% of their volume is in excess of 48 feet. In their response to MMA's discovery requests, no information was provided by which I could determine whether Louisiana-Pacific currently uses trucks for shipment of lengths in excess of 48 feet.

Although it has raised certain arguments concerning outbound traffic, as discussed above, Louisiana-Pacific has not contended that any increase in price for transportation of inbound traffic that currently moves by rail would be burdensome. We have assumed, therefore, that Louisiana-Pacific believes that it has adequate alternative transportation options for inbound traffic.

Louisiana-Pacific has emphasized its \$140 million investment to convert its plant so that it can manufacture its new oriented strand lumber product. As noted above, []% of the market for this product is, according to Louisiana-Pacific, on the West Coast. While the wisdom of this investment is not an issue appropriate for comment by MMA, it is reasonable, given the distance from Houlton to the West Coast, to raise the question whether MMA should, in effect, bear the burden of slightly higher trucking costs to the West Coast. If it were assumed, for example, that the \$140 million investment was made on the assumption that there would be a six-year payback period, that would imply that the anticipated pretax cash flow would be approximately \$[] million per year.

Transportation costs would be only a very small fraction of such a return on Louisiana-Pacific's investment.

Louisiana-Pacific also suggests that increased transportation costs would have a significant impact on it, because its profit margins are only []-[]%. Based upon information produced in discovery, it would appear that Louisiana-Pacific has been [] at its facility in Maine and that transportation expenses are []. The total increase in transportation costs for Louisiana-Pacific, as projected by MMA, is \$[] annually, which is approximately []% of the 2009 total cost of sales of the Houlton facility. The above values are summarized in Exhibit REH-6. Rows 7 through 11 are from Louisiana-Pacific's discovery information. The percent rows are what I added to the spreadsheet. While the cost of transportation is fairly uniform over time, taken as a percent of total cost, it is clear that []. In fact, row 24 shows the margin for each year, thus affirming the immaterial impact of the added transportation post abandonment.

Huber Engineered Woods

In Huber's opposition, the statement is made that a "significant quantity of its finished product is shipped by rail". To test this statement, I prepared exhibit REH-7 based on data obtained in discovery from Huber. Columns A through B are a pivot of their discovery detail by year showing what they refer to as "3/8 footage" and the count of the number of orders. Underneath the pivot in rows 11 through 14 is a summary of the percent shipped by each mode. The amount of rail volume for the year 2009 is only []% which tends to contradict the significance of rail. Further, in columns J \diamond M, their discovery information shows that []

Furthermore, transportation alternatives do exist, for the reasons described above and as demonstrated by virtue of the vast amount of traffic currently moving by truck.

(

VERIFICATION

State of Maine

ss:

County of Knox

I, Robert E. Holland, being duly sworn, depose and state that I have been retained by Montréal, Maine & Atlantic Railway, Ltd. to analyze alternative transportation means and rates, that I have examined all of the statements contained in the foregoing Rebuttal Verified Statement and that all such statements are true and correct to the best of my knowledge and belief.

Robert E. Holland

Subscribed and sworn to
before me this __ day of
May, 2010

Notary Public

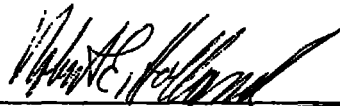
VERIFICATION

State of Maine

SS:

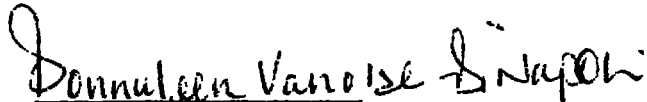
County of Knox

I, Robert E. Holland, being duly sworn, depose and state that I have been retained by Montréal, Maine & Atlantic Railway, Ltd. to analyze alternative transportation means and rates, that I have examined all of the statements contained in the foregoing Rebuttal Verified Statement and that all such statements are true and correct to the best of my knowledge and belief.



Robert E. Holland

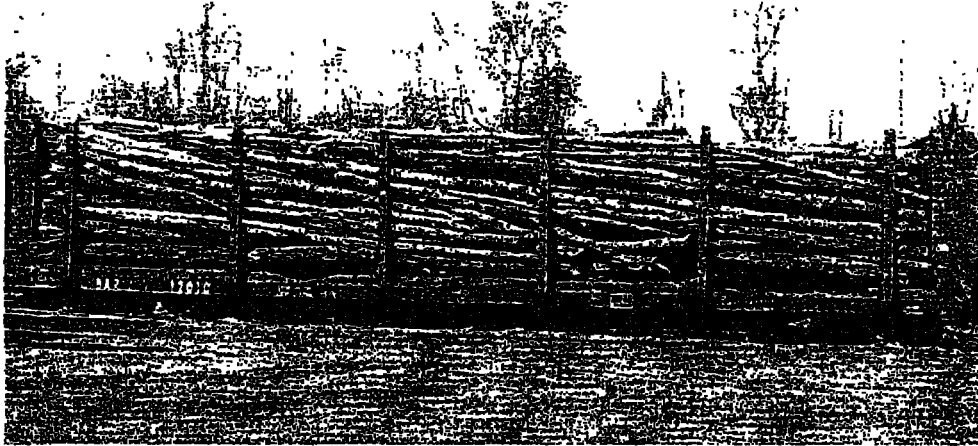
Subscribed and sworn to
before me this 21 day of
May, 2010


Notary Public

DONNALEEN VANORSE-DINAPOLI
Notary Public, Maine
My Commission Expires May 1 2015

REDACTED

BAR Series 12000-12024



CAR TYPE:	Log Rack
FLOOR TYPE:	Steel Grating
CUSHIONING:	Draft Gear
CAR PLATE:	Exceeds Plate C
MINIMUM WOOD LENGTH:	16'

CAR MEASUREMENTS

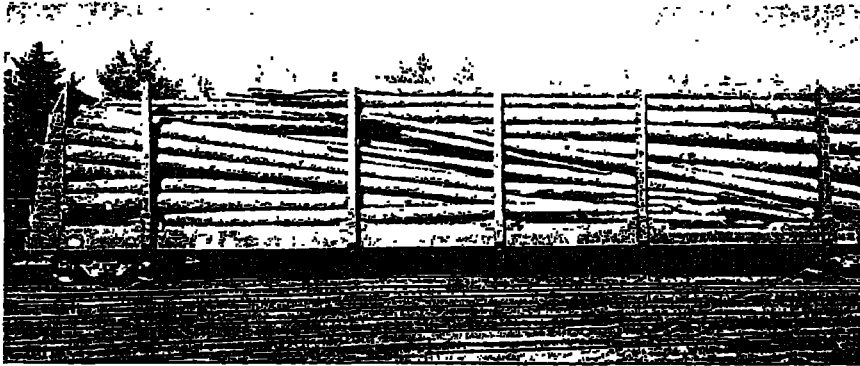
EXTREME WIDTH & HEIGHT:	10'8", 14'0"
EXTERIOR WIDTH & HEIGHT:	10'1", 12'9"
INSIDE LENGTH, WIDTH, HEIGHT:	64'0", 9'0", 4'3"
LENGTH OVER COUPLER:	72'0"
NET LOAD WEIGHT:	146,800 lbs
EMPTY WEIGHT:	73,200 lbs
SPACING OF STAKES FROM BULKHEAD:	
NUMBER OF STAKES:	6

Notes: 1. These are NOT interchangeable

2. Equipment referred to as "Blue Racks"

3. Average load factor is 27 cords of tree length hardwood or
softwood saw logs

BAR Series 1000-1040



CAR TYPE:	Log Rack
FLOOR TYPE:	Steel Grating
CUSHIONING:	Draft Gear
CAR PLATE:	Exceeds Plate C
MINIMUM WOOD LENGTH:	Tree Length/Semi Tree Length

CAR MEASUREMENTS

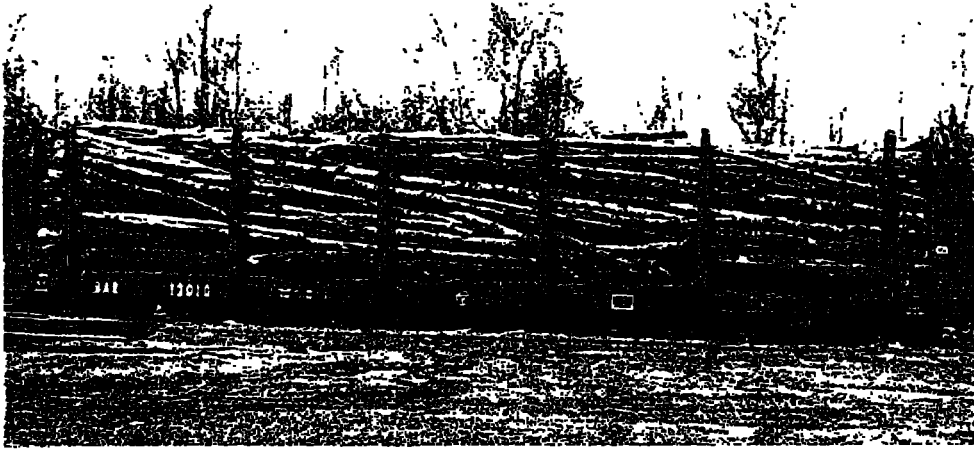
EXTREME WIDTH & HEIGHT:	10'9", 14'2"
EXTERIOR WIDTH & HEIGHT:	10'9", 14'4"
INSIDE LENGTH, WIDTH, HEIGHT:	64'0", 9'4", 11'3"
LENGTH OVER COUPLER:	72'0"
NET LOAD WEIGHT:	145,900 lbs
EMPTY WEIGHT:	74,100 lbs
SPACING OF STAKES FROM BULKHEAD:	5'8"
NUMBER OF STAKES:	5, 6

Notes: 1. Cars are not equipped with straps

2. Cars can not Haul 16 ft Logs

3 Average load factor is 67 tons or 27 cords of tree length wood.

BAR Series 12000-12024



CAR TYPE:	Log Rack
FLOOR TYPE:	Steel Grating
CUSHIONING:	Draft Gear
CAR PLATE:	Exceeds Plate C
MINIMUM WOOD LENGTH:	16'

CAR MEASUREMENTS

EXTREME WIDTH & HEIGHT:	10'8", 14'0"
EXTERIOR WIDTH & HEIGHT:	10'1", 12'9"
INSIDE LENGTH, WIDTH, HEIGHT:	64'0", 9'0", 4'3"
LENGTH OVER COUPLER:	72'0"
NET LOAD WEIGHT:	146,800 lbs
EMPTY WEIGHT:	73,200 lbs
SPACING OF STAKES FROM BULKHEAD:	
NUMBER OF STAKES:	6

Notes: 1. These are NOT interchangeable

2. Equipment referred to as "Blue Racks"

3. Average load factor is 27 cords of tree length hardwood or
Softwood saw logs

MMA 14,000 SERIES



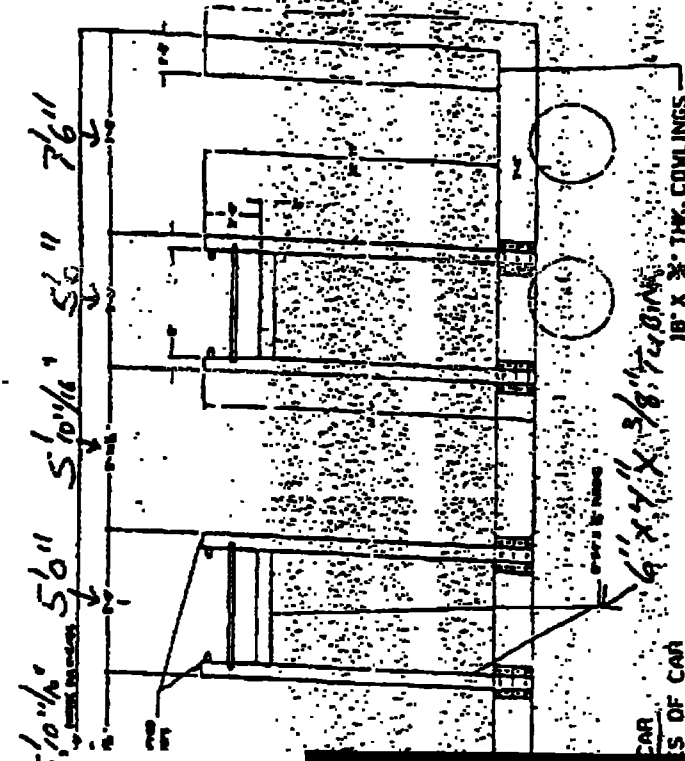
02 01 107

Richard E. Meyers

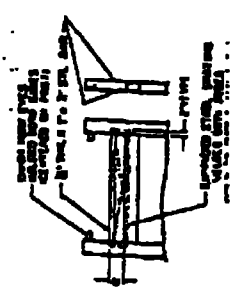
1-847-726-0689

P. 4

52' 8" inside length 9' 4" wide MMA 14000 SERIES
60' 10" outside " 10' 10" high inside 160,000 net payload
Log racks



- NOTES:
1. ALL CAR IS WILL HAVE PRE-FABRICATED STANDINGS UTILIZING 4" X 6" X 3/8" TUBE STEEL.
 2. THE TOP OF EACH POST WILL HAVE CAPS.
 3. STANCHION ENDS AND COWINGS WILL BE PAINTED BLACK.
 4. STANCHION ENDS WILL BE 3/8" THICK.
 5. ONE 6" X 8" PLATE TO BE MOUNTED TO EACH POST.
 6. SEE SECTION TOTALS.
 7. LEFT SIDE OF CAR CHAINS TO HAVE GRAB HOOKS.
 8. NEW REP ORTING MARKS ARE SLR 32,000 THRU 32,879.



Mid Industry Specialist, Inc.
1901 S. Roberts Road, #2
P.O. Box 100, L. 00410 US
Tel 718-588-1070
Fax 718-588-4070

Interchangeable

275 SLR

REDACTED

Source: PC-Rain®

RE Holland

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REDACTED

REDACTED

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11-11-11

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11

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB 1043 (Sub-No. 1)

MONTRÉAL, MAINE & ATLANTIC RAILWAY, LTD.--
DISCONTINUANCE OF SERVICE AND ABANDONMENT--
IN AROOSTOOK AND PENOBSCOT COUNTIES, MAINE

REBUTTAL VERIFIED STATEMENT OF MELODY A. SHEAHAN

My name is Melody A. Sheahan. I am Vice President Engineering of Montréal, Maine & Atlantic Railway, Ltd. ("MMA"). I submitted a Verified Statement earlier in these proceedings in connection with the filing of an application by MMA to abandon approximately 233 miles of line in Penobscot and Aroostook Counties, Maine. In this Rebuttal Verified Statement, I will respond to arguments made by the State of Maine (the "State") concerning the net liquidation value ("NLV") of the Abandonment Lines and the appropriate level of rehabilitation expenses and ongoing maintenance required for the Abandonment Lines as well as comments made by Irving Woodlands and Irving Forest Products ("Irving").

NLV

As outlined in my Verified Statement, the NLV of rail, ties and other track material, discounted to present value, was \$[] based upon market prices in November, 2009. The State has not challenged the unit prices that I used for materials or the removal costs. In its opposition, the State has, however, offered several arguments, not based on the pricing structure, in an effort to reduce MMA's valuation of the rail, ties and other track material ("OTM"). As discussed below, we believe that those arguments

either do not warrant any reduction in MMA's calculation of NLV for rail, ties and OTM or any reduction is less than claimed by the State.

Since the determination of NLV for the rail, OTM and ties in late 2009, the market for used rail and associated track material has gone up substantially. As of the first week of April, 2010, prices for rail and other track material were up approximately 30% compared to prices in November, 2009 which were used for the calculation of NLV in our application. In November, 2009 and again in April, 2010, Unitrac provided pricing for the track materials based on their over 80 years' experience with both the steel markets and abandonments and their knowledge of the current market prices. As seen in the email from Unitrac President Ray Lambert presented in my original work papers, their pricing on both the salvage values of the materials and "take up costs" are based on actual monthly sales and actual experiences in handling abandonments. Prices have been steadily rising from the initial prices we were given in November. Mr. Lambert advised me in April, 2010 that prices in January, 2010 had increased []% since November, 2009 and had increased an additional []% by April, 2010. In order to understand the effect of these price increases on the NLV analysis submitted with the application, Mr. Lambert inserted the updated prices in the spreadsheet format used for Exhibit D attached to my earlier Verified Statement.

MMA has recalculated the NLV based upon these increased prices, as provided by Unitrac, and the results are shown in Exhibit A attached, which are revised spreadsheets in the same format as Exhibit D that was attached to my earlier Verified Statement. Also attached as Exhibit B is a spreadsheet showing the comparison of the November, 2009 and April, 2010 "price per ton" and the "difference per ton" for the two

periods. The NLV for the rail, ties and other track material in the Abandonment Lines based upon current market prices, and taking into account certain adjustments based upon comments by the State and further review, as discussed below, is \$[].

The State has advanced several arguments based upon its inspection of the Abandonment Lines. First, they argue that the MMA inventory of material was overstated or incorrect in certain respects, such as the number of ties and the weight of rail at certain locations. Second, they contend that MMA did not take into account the cost of restoring grade crossings. Finally, the State suggests that there should be a deduction from NLV for the value of rail located on bridges.

MMA did its NLV analysis on the basis of 3,300 ties per mile. The State contends that there were only 3,000 ties per mile and that, as a consequence, the value of ties and other track material should be reduced by 9%. As shown below, The State is incorrect.

The Bangor & Aroostook Railroad ("BAR") system, which was acquired by MMA, was originally built on a 19" tie spacing, which equates to 3,335 ties per mile. The abandonment lines were built using 6" x 8" ties and 100 pound rail or less on the main and branch lines. MMA continues to use 6" x 8" ties in its replacement program.

Several times during the State inspection, the State's inspector, C. David Pettry, accompanied by Robert Cote of MMA, counted the number of ties per rail and found either 23 or 24. This equates to 3,114 and 3,250 ties per mile, respectively. It is not clear whether Mr. Pettry actually ever walked a complete mile and counted ties during the inspection. It is clear, however, that the Abandonment Lines have well in excess of 3,000

ties per mile. With today's standard car weight of 263,000 pounds, Mr. Pettry's estimate of 3,000 ties per mile would result in numerous broken rails and derailments due to the lack of proper support of the rail by the ties. Furthermore, over time the tie spacing has changed due to the poor conditions of the ties and when doing a walking inspection very often it is possible to see only mud where a tie has dropped and is covered by ballast or broke and was removed.

Based on Mr. Pettry's counts and further review, MMA believes that 3,168 ties per mile, which equals a 20" tie spacing, is in all likelihood more accurate than 3,000 or 3,300 ties per mile. This figure is consistent with MMA's current standard for tie replacement (20" spacing with 6" x 8" ties) and gives adequate support for the current 263,000 pound cars. Changes have been made in the NLV calculations to indicate the reduction in ties to 3,168 per mile as well as the corresponding reduction in OTM.

The State has also taken issue with the MMA inventory of rail and other material. As discussed below, certain of The State's contentions have, upon further review, been accepted, while certain others are incorrect.

Madawaska Subdivision. After additional review and inspection, MMA found that there are 16.7 miles of 70-pound rail located in the yards and siding, which would reduce the 100-pound scrap rail by the same amount. The 112-pound rail is all in the main line, as shown on the track chart, for a total of 42.08 miles. An inventory was conducted in September, 2009, a copy of which is attached as Exhibit C, showing the location, size and condition of all 113 turnouts, not 97 as contended by the State. The

updated NLV for the Madawaska Subdivision, based on the revised tie counts, the changes discussed above and the price increase, is \$[].

Fort Fairfield Subdivision. There were 2.3 miles of 70-pound rail that had been identified as 80-pound rail in the yard tracks. The updated NLV, based on the revised tie counts, this change and the price increase, is \$[].

Limestone Subdivision. The updated NLV, based on the revised tie count and the price increase, is \$[].

Presque Isle Subdivision. After further inspection, MMA has determined that 2.0 miles of 70-pound rail in the yards or sidings had mistakenly been marked as either 85 or 100-pound rail. The updated NLV, based the revised tie counts, this change and the price increase, is \$[].

Houlton Subdivision. During further review, MMA found that there were 3.48 miles of 75-pound rail in the yards that had previously been identified as 85 or 100-pound. The updated NLV for this subdivision, based on the revised tie counts, this change and the price increase, is \$[].

The State has taken the position that the NLV should be reduced by \$[] in order to reflect the cost of restoring grade crossings. There are 98 at-grade crossings in the proposed abandonment area, but 7 of those crossings are located in the Presque Isle Industrial Park, which is not owned by MMA. These tracks are owned by the City of Presque Isle and there is no plan to remove any infrastructure inside the industrial park.

The tracks, ties and OTM in the industrial park were not included in the calculation of NLV. This brings the total at-grade crossings which would need to be restored to 91.

In the application, MMA stated its assumption that the cost of restoring grade crossings would be offset by the value that could be recovered from the salvage of signals at 58 signalized crossings. After further review, MMA estimates that the salvage from the 58 signal cases has a value between \$[] to \$[] each. Using the average of \$[], the total estimated value of these cases is \$[]. With the State's estimate of \$[] per crossing for the restoration cost, and using the 91 at-grade crossings that would have to be restored, the total cost of restoration would be \$[]. This would equate to a \$[] reduction in the NLV.

Finally, the State contends that NLV should be reduced by the value of rail that is located on bridges. As noted in the application, MMA intends to leave all of the bridges in place and to salvage rail from the bridges. Removal of rail from bridges on abandoned rights-of-way is entirely feasible and has been a standard practice of MMA and its predecessors. A primary reason for removing the rail is safety. For example, in many cases the abandoned rights-of-way are used for recreational purposes, whether or not the State purchases the right-of-way, and it would be extremely dangerous for snowmobilers or all-terrain vehicle operators to cross bridges if the rail were left in place. Furthermore, sale and use of the right-of-way for logging roads would also require the removal of the rail. Consequently, there should be no deduction from NLV for rail on bridges.

Rehabilitation and Maintenance Expenses

Both the State and Irving contend the maintenance of way expenses set forth in the application and my earlier Verified Statement are conflicting and overstated. As

explained below, I disagree. Part of the problem in understanding and addressing these arguments is confusion on the part of the State and Irving concerning the different types of expenditures involved. In reality, we are discussing three distinctly different sets of numbers.

The first is deferred capital (DC), which is also referred to as deferred maintenance. This is the amount of capital work which has been deferred on the Abandonment Lines over the last several years due to lack of adequate capital. Performance of DC is necessary to get the infrastructure back to a "state of good repair", i.e. a condition that can be maintained going forward by means of normalized annual capital maintenance each year. The amount of DC at this time is \$[] million, and details of those expenditures were shown in Exhibit G of my original Verified Statement, as well as in my work papers.

Mr. Hunter contends that the Abandonment Lines should be maintained only at class 1 or class 2 condition and that a DC expenditure in the range of \$[] million would be adequate. This is surprising for a consultant working for the State, which submitted an application for a TIGER grant in 2009 stating that the DC needs for the Abandonment Lines were \$[] million (which at that time did not include an additional \$[] for the Limestone subdivision). The State's estimate of DC for purposes of the TIGER application was based upon my analysis, which is the same analysis used for purposes of the application. Beyond that, an expenditure of the magnitude suggested by Mr. Hunter would mean that the condition of the Abandonment Lines would continue to deteriorate, slow orders would multiply, transit times would be

increased and the efficiencies and savings from the performance of the full scope of the DC rehabilitation work would not be realized.

The second type of maintenance, Normal Annualized Capital Maintenance (CM), is estimated at \$[] million annually. This represents the amount of capital work that should be done each year, assuming that funding is available, to keep the infrastructure in a state of good repair once the deferred capital work has been completed. The basis for the estimates of CM are set forth in detail in my Verified Statement and the exhibits attached to the Verified Statement. The most significant determinant of CM is the life expectancy of materials. If annual CM is not performed, a line will revert back to the cycle of DC which will again result in slow orders, increased transit times and the inability to realize any operating efficiencies from completing the existing \$21.86 million in deferred capital work.

The third category is general basic maintenance operating expense (OE). This is the amount required to be spent on a day to day basis to do required track, bridge and signal inspections and any repairs required from those inspections, handle snow and ice removal, fix washouts, switch maintenance, crossing maintenance, rail flaw detection and rail replacement, geometry car testing and repairs, brushcutting, weed spray, etc. OE is the bare minimum necessary to permit operations on the Abandonment Lines and comply with FRA safety regulations.

The Verified Statement of Robert C. Finley, Exhibit 2, page 3, shows the calculation of the Avoidable On Branch MofW costs. For the Base Year these costs totaled \$[], consisting of \$[] for materials, such as ties and ballast for CM and the remainder, \$[], for OE. The \$[] spent in the Base Year was for

the day to day operation. This equates to \$[] per mile, which I still believe is a reasonable and necessary expenditure for OE on an annual basis.

In addition to the \$[] for materials, approximately \$[] in additional capital labor (which was not included in the avoidable costs) was used on the Abandonment Line. Of the \$[], \$[] was spent on ballast and \$[] invested in ties. This equates to [] miles per car of ballast and [] ties per mile installed on the Abandonment Line during the base year. Total CM for the Abandonment Line in the base year was \$[], which comes to \$[]/mile based on the 233 main line miles or \$[]/mile based on the 285 miles taking into account yards and sidings. In Mr. Hunter's Verified Statement at page 4, he noted during his initial interviews I indicated we were only spending \$[] per mile on "maintenance". As discussed above, in fact during the Base Year we spent less than half of that on CM. The amount spent on CM was insignificant compared to the amount required, but it was all that was permitted by the available funding.

On page 32 of the Irving opposition, they argued that there was an inconsistency between my statement that "all track in the Line is suffering from deferred maintenance of surfacing" while at the same time I indicated the Base Year avoidable costs included surfacing. As shown in the above paragraph, minimal CM was done, but it can hardly be said surfacing on the line was completed. Only small segments were surfaced to remove defects found by the Geometry car. No Out of Face--long distances--surfacing has been done on the Abandonment Lines in several years.

At page 33 of the Irving opposition, they question the costs for surfacing as represented in the DC and CM calculations. In the DC calculations, I estimated \$[]

per mile, and for CM I estimated \$[] per mile. Again, no Out of Face surfacing has been done on the Abandonment Lines in years and even during the spot surfacing only minimal amounts of ballast have been distributed.

The Abandonment Lines are suffering from a lack of adequate subgrade. The ballast is basically acting as the base with an inadequate foundation below. Currently, the Abandonment Lines need an average of [] cars per mile of ballast in order to develop an acceptable subgrade condition. When distributing that amount of ballast, two passes of the surfacing equipment would normally be required, raising the cost per mile of the operation. In the CM estimate, an average of [] car per mile of ballast was estimated, and it was assumed that all surfacing could be done with a single pass, therefore reducing the cost per mile.

Also on page 33, Irving questioned the frequency of the surfacing on the Abandonment Line. As indicated in my Verified Statement the Abandonment Lines are on a grade which continually ascends from south to north. In addition, much of the track along runs along waterways and on the sides of hills. The combination of the grade, weather conditions through the area and the location of the track makes it very difficult to hold line and surface, which reduces the normal surfacing cycle to two years.

Irving also questions the "inconsistency" of the rail prices in the DC estimates and the CM estimates. The difference is readily explainable. The \$[]/mile estimate for DC assumes Out of Face installation done by a contractor with all new materials. The \$[] estimate assumes some Out of Face and some curve patch installation, with some areas using the current plates and reusing other OTM. In addition, it was assumed that some work would be done by company forces, therefore reducing the cost per mile.

Since my earlier Verified Statement in February, 2010, conditions have continued to deteriorate on the Abandonment Lines. Over the past few months, we have placed several of the yards in exempt status and in the last few weeks we have reduced an additional 20 miles of track to 10 mph and reduced locations which were 30 mph to 25 mph. Exhibit D is an up to date Daily Operating Bulletin showing the slow orders as they exist on Wednesday, May 19, 2010.

Infrastructure conditions will decline at an accelerating pace if capital expenditures are not made soon. Each year that CM work is not completed at least \$[] million would need to be added to the deferred capital backlog and in some cases even more due to a spiraling effect from the overall conditions. The Abandonment Lines will continue to deteriorate, slow orders will multiply, transit times will be increased and costs of the overall operation will continue to rise.

REDACTED

REDACTED

Turnout Evaluation
Abandonment AreaAB 1043
Exhibit C
Turnout Inventory

Subdivision: <u>Madawaska</u>		Date: <u>9/29/09</u>						
Yard Location:								
ML or BL Mile Post/ Yard Tk No.	Rail Wt.	Switch Size: No. 8	No. 10	No. 12	Other	Condition: Scrap	Fit	
<u>Grindstone</u>								
113.41	112		X					X
113.79	112		X					X
<u>Summit</u>								
118.50	112		X					X
<u>Starkville</u>								
124.95	112		X			X		
<u>Sherman</u>								
128.68	112	X				X		
128.74	112	X						X
128.95	115	X						X
129.69	115		X			X		
<u>Crystall</u>								
134.00	115		X					X
<u>Island Falls</u>								
139.86	100	X				X		
139.90	100	X						X
140.18	100		X			X		
<u>Oakfield</u>								
149.13	115		X		11215 Feq			X
<u>Smarna</u>								
150.63	112	X						X
151.07	112	X						X
<u>Weeksboro</u>								
160.78	115		X					X
<u>Hewitt Brook</u>								
168.36	115		X					X
168.45	115		X					X
<u>St Croix</u>								
167.92	100		X					X
168.42	100		X					X
<u>Levesque</u>								
183.54	112	X						X
183.99	112	X						X
C spur	100	X				X		
<u>Squapan</u>								
<u>see yard</u>								

Turnout Evaluation
Abandonment AreaAB 1043
Exhibit C
Turnout Inventory

Subdivision: <u>Madawaska</u>		Date: <u>9/29/09</u>						
Yard Location: <u>Oakfield</u> <u>149.13</u>								
		Rail Wt.	Switch Size: No. 8	No. 10	No. 12	Other	Condition: Scrap	Fit
ML or BL Mile Post/ Yard Tk No.								
South L 1	112				X			X
N	112	X				115 SG Eng	X	
G	112		X				X	
South 4	112		X				X	
South 6	112		X				X	X
South 8	112		X				X	
North 6	112		X				X	X
North 4	112		X				X	X
North L 1	112		X				X	
South L 3	112		X				X	
South 32	112	X					X	
South 34	112	X				115 SG Eng	X	
South 36	112	X				115 SG Eng	X	
Y-South	115		X					X
South # 33	100	X					X	X
North # 33	112		X				X	
North # 31	112		X				X	
M-South	100	X					X	
North # 35	112		X				X	X
North 36	112	X				SG Eng	X	
North 34	112	X				SG Eng		X
North 32	112	X				SG Eng		X
North L 3	112		X				X	

Turnout Evaluation
Abandonment AreaAB 1043
Exhibit C
Turnout Inventory

Subdivision: <u>Madawaska 945</u>		Date: <u>9/29/09</u>					
Yard Location: <u>Squa Pan 185.87</u>							
ML or BL Mile Post/ Yard Tk No.	Rail Wt.	Switch Size:				Condition: Scrap	Fit
		No. 8	No. 10	No. 12	Other		
184.91 So. 52	112		X			X	
185.0 So. 51	112		X			X	
185.0 No. 52	112		X			X	
185.0 So. 52	112		X			X	
South 12 4	112	X					X
Aspur	100	X					X
185.71 North 11	112		X			X	X
185.91 North 12	112		X			X	
146.87 R4 north	112	X				X	X
184.08 South 11	112		X			X	
North 11	100		X			X	
Abandon							
North 11							
Prospect 56	112	X				X	

Turnout Evaluation
Abandonment AreaAB 1043
Exhibit C
Turnout Inventory

Subdivision: Madawaska sub		Date: 9/29/09					
Yard Location:							
ML or BL Mile Post/ Yard Tk No.	Rail Wt.	Switch Size: No. 8	No. 10	No. 12	Other	Condition: Scrap	File
Ashland							
191.10 Bspn	100	X				X	
191.87 S #2	115	X					X
South #4	100	X				X	
191.94 S #1	100	X					X
North #4	100	X				X	
192.17 No 2	100	X				X	
192.60 No #2	112	X				X	
Moody							
194.33	100	X				X	
194.64	100	X				X	
Skerry							
197.92 Bspn	115	X					X
C spur	100	X					X
D spur	100	X					X
198.21 #7	100		X				X
198.33	100		X				X
South #9	100		X			X	
198.66	115		X				X
198.77	115		X				X
North #7	112		X				X
McDonalds							
202.11	100	X					X
202.12 S #1	100	X					X
D spur	100	X					X
E spur	100	X				X	
202.59 No 2	100	X				X	
Portage							
203.53	100		X			X	
Aixen							
212.09	100		X				X
212.52	100	X					X
Winterville							
220.13	115	X					X
Eagle Lake							
226.73	100		X				X
227.08	100		X				X
Wallagress							
231.34	112		X				X
231.76	112	X					X
Soldier Pond							
235.38	115	X					X
235.62	100	X				X	

Turnout Evaluation
Abandonment AreaAB 1043
Exhibit C
Turnout Inventory

Subdivision: <u>Madawaska sub</u>		Date: <u>9/30/09</u>				
Yard Location: <u>Fort Kent 244.04</u>						
ML or BL Mile Post/ Yard Tk No.	Rail Wt.	Switch Size			Condition: Scrap	Fit
		No. 8	No. 10	No. 12		
242.83 (S-5T)	100	X				X
243.43 A-5T	100	X				X
243.63 L	100	X				X
243.65 S-2	100	X				X
South #1	80	X				
South #3	70	X			SG FROG	
South #5	70	X			SG FROG	
243.88 A-1	100	X				X
S-1 Switch	70	X			SG FROG	
S-15 FROG	70	X				
Dead River spur	70	X			SG FROG	
North #5	80	X				
North #3 removed only one guard rail left.						
243.97 North BL	80		X			X
244.01 A-2	80	X				X
244.06 North IS	100		X			X

Turnout Evaluation Abandonment Area

AB 1043
Exhibit C
Turnout Inventory

Subdivision: <u>Madawaska</u>		Date: <u>10/1/09</u>					
Yard Location:							
ML or BL Mile Post	Rail Wt.	Switch Size: No. 8	No. 10	No. 12	Other	Condition: Scrap	Fit
Yard Tk No.							
<u>MCL</u> <u>246.09</u>	<u>Andover</u>	<u>100</u>	<u>X</u>				<u>X</u>
<u>Frenchville</u> <u>255.37</u>	<u>112</u>	<u>X</u>					<u>X</u>
<u>255.74</u>	<u>112</u>	<u>X</u>					<u>X</u>
<u>Cleveland</u> <u>256.74</u>	<u>112</u>	<u>X</u>				<u>X</u>	

Effective 1900
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and continuing in effect until 1900
Thursday, May 20, 2010

Sub: All

At / Between	And	Speed	Information	Item
ALL		NA	Railroad Security Alert Level is currently 2. KIS...8-2-05	9413
ALL		NA	Unless equipped with an operational Hot Start system, leave locomotives running system wide. JWS 09/25/09	13641
ALL		NA	Operating Bulletin No. 2-181 has been posted per KIS 12/29/09.	13762
ALL		NA	Reminder to all Locomotive Engineers. Rule "Y" Locomotive Exhaust Stacks on page 5 of the January 2010 Summary Operating Bulletin...PAB. 3-8-10	13837
All		NA	Winter Tonnage Restrictions have been lifted...JWS...3-15-10	13849
ALL		NA	Operating Bulletin No. 2-185 has been posted per KIS 03/30/10.	13885
All		NA	ADD to Bangor and Aroostook Air Brake and Train Handling Rules effective July 27, 1997, Rule 4017 At Other Points Unattended Engines Running a new item, letter J, which reads as follows: Other properly-qualified crew members may perform Items A through I, however, the Locomotive Engineer is responsible for the correct observance and application of this rule. ADD to Bangor and Aroostook Air Brake and Train Handling Rules effective July 27, 1997, Rule 4018 At Other Points Unattended Engines Shut Down a new item, letter F, which reads as follows: Other properly-qualified crew members may perform Items A through E, however, the Locomotive Engineer is responsible for the correct observance and application of this rule.	13890
All		NA	Effective 0001 Sunday, April 11, 2010 a Remote Protection Zone is established in Cautionary Limits and on non-main track between Mile 4 Searsport Sub and end of track at Searsport. The Searsport Switching Zone between Mile 1 and end of track Searsport Sub is removed. Movements within the Remote Protection Zone between Mile 4 and end of track are governed by Operating Bulletin containing Remote Protection Zone Instructions. Currently Operating Bulletin No. 2-186 contains these instructions.	13891
All		NA	Operating Bulletin No. 2-186 and 2-187 have been posted. KIS...4-8-10	13901
All		NA	Locomotive engineers check with RTC at end of tour of duty about shutting down locomotives...JWS...4-12-10	13905
ALL		NA	Operating Bulletin No. 2-189 has been posted per KIS 04/30/10.	13949
All		NA	Operating Bulletin No. 2-190 has been posted. KIS...5-4-10	13953
All		NA	Locomotive engineers must shut down locomotives that will be idle for periods in excess of 15 minutes during the engineers tour of duty, including periods of short duration where the temperature is below 45 degrees. Any locomotive units in a multiple unit consist not needed to haul the train and maintain maximum authorized speed should be idled if not equipped	13962

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Sub: All

At / Between	And	Speed	Information	Item
			with a Hot Start device and if the temperature.weather will not permit the unit to be shut down. or shut down .when temperature.weather permits. On units equipped with Hot Start devices, if the Hot Start is bad.order and the temperature.weather will not permit the unit to be shut down until the next use, engineers must report that fact on Form 5001A. When it is known that once shut-down a locomotive cannot be restarted, or when it is known that batteries are sufficiently weak that it is unlikely that the unit can be restarted, the locomotive should not be shut-down, but engineers must report that fact on Form 5001A.	
ALL		NA	Operating Bulletin No. 2-191 has been issued per KIS 05/06/10	13963
All		NA	Operating Bulletin No. 2-192 has been posted.. KIS...5-13-10	13972

Sub: E Millinocket

At / Between	And	Speed	Information	Item
0.25NCLS	1.0	10	Track conditions. No signals displayed...BMR.. 9-3-09	13546
2.0	3.0	10	Track conditions. No signals displayed...BDB... 9-21-07	11728
2.49		10	Account track conditions over crossing. No Signals...KRB.. 4/8/04	7826
E. Millinocket		NA	Special Instruction No. 09-35 on page 35 of Timetable No. 2 is deleted...KIS...9-11-09	13590
E. Millinocket		NA	D-track closed account track conditions. Private lock on switch ..RAP...12-12-08	12871

Sub: Fort Fairfield

At / Between	And	Speed	Information	Item
4.0	6.0	10	Surface conditions. No signals displayed...GJN...3-19-09...Edit...GJN...3-26-09...Edit...GJN...4-2-09...Edit...GJN...5-14-09...Edit...GJN...7-23-09...Edit...GJN...1-14-10	13040
5.3	5.6	10	Track conditions. Green signals displayed...DLM...2-19-04...Edit...GJN...7-27-06 Edit GJN 08/06/06...Edit...GJN...12-11-08	7666
7.54 crossing		10	Over crossing. Surface conditions. Green signals displayed...GJN...5-28-09	13246
7.65crossing		10	Over crossing. Surface conditions. No signals displayed...GJN...3-4-10	13833
7.99crossing		10	Over crossing. Surface conditions. No signals displayed...GJN...7-23-09	13436
8.0	9.0	10	Account Track Conditions. No signals displayed per GJN 04/07/10.	13900
9.0	10.0	10	Track conditions. No signals displayed. WCL...12-29-06	10917
Easton		NA	C-spur closed account defective rail. Switch spiked and private lock applied...GJN...6-26-09	13370

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Sub: Fort Fairfield

At / Between	And	Speed	Information	Item
9 11 crossing		NA	Special instruction 07-1 on page 32 of Timetable No.2 is changed in its entirety to read: 07-1 Easton: Movements must not occupy the crossing at Mile 9.11 until the crossing protection has been seen to be operating continuously for at least 20 seconds. This special instruction applies both on Main Track and Spur B...KIS...06/01/09	13285
12.09		NA	Automatic warning devices at Mile 12 09 out of service further notice. Protect crossing in accordance with Rule 103g...RR...4-2-09	13070
14.61		NA	Automatic warning devices at Mile 14.61 out of service further notice. Protect crossing in accordance with Rule 103g...RR...4-2-09	13071

Sub: Houlton

At / Between	And	Speed	Information	Item
1.0	2.0	10	Account surface condition. No signals displayed. GJN 04/27/10	13940
5.88	6.59	10	Account track condition. Green signals displayed. (6.59=North Switch Ludlow) GJN 04/27/10	13942
7.0	8.0	10	Account Track Conditions. No signals displayed per GJN 04/27/10.	13943
8.23		10	Over Crossing account Surface Conditions. No signals displayed per GJNickerson 02/23/10.	13812
8.62	8.62	10	Account track condition. Green signals displayed. GJN 01/18/10	13780
10.0	11.0	10	Surface conditions. No signals displayed...GJN...3-29-10	13877
13.0	14.0	10	Account Track Conditions. No signals displayed per GJN 04/27/10.	13944
Houlton		05	Do Not Exceed 05 MPH on A-spur (grain track)...BDC...5-6-08	12321
Ludlow		NA	Siding closed account tie condition. Private locks applied...GJN...10-19-09...Edit GJN 04/28/10	13695
New Limerick		NA	New derail installed on Wax track. L.P. yard...GJN...10-19-09	13696
Houlton		NA	AA-track is closed on South-end. RED signal is displayed...GJN...4-15-09	13126
Houlton		NA	Tracks No. 2-4-6-18 closed for winter...GJN...2-17-10...Edit...GJN...5-3-10	13808
Houlton		NA	Carys Mills (Staley) track # 29 closed on South-end from South switch to gate...GJN...5-14-10	13975
Houlton		NA	AA-track closed further notice. Private lock on switch...GJN...5-14-10	13976

Sub: Limestone

At / Between	And	Speed	Information	Item
4.23		10	Surface conditions. Green signals displayed .DMC...2-17-10	13807
5.72crossing		10	Over crossing. Surface conditions. No signals displayed...DMC...3-23-10	13865
Saunders		NA	Track is closed for winter...WCL...1-3-07	10922
Industrial		NA	Idler car must be used when switching A-spur at the sand hopper.. JKP...6-15-09	13317
6.00	15.25	NA	Mile 6 to Mile 15.25 is now designated as FRA "Excepted Track" Employees must apply the requirements of GSI 43 when operating on this track...KIS...5-19-09	13333
Caribou		NA	H Spur in Caribou is closed .MPO. .11/01/09...Edit...DMC...4-23-10	13713
Caribou		NA	H-spur OK to use about 350 feet beyond crossing to RED signal...DMC...5-17-10	13980

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Sub: Lyndonville

At / Between	And	Speed	Information	Item
Newport Yard		05	On all tracks between North Yard Switch and South Siding Switch. RDW 08/08/04	8262

Sub: Madawaska

At / Between	And	Speed	Information	Item
107.50	183.50	30	Maximum speed on main track between north cautionary limit sign Millinocket and south cautionary limit sign Squa Pan not to exceed 30 MPH.	3672
112.0	113.0	25	Account surface condition. No signals displayed. BMR 05/27/09	13225
113.0	120.0	25	Track conditions. No signals displayed. BMR 2-11-09	12955
118.5	120.0	10	118.5 South switch Summit to MP 120.0 account track conditions. No signals displayed. RNC 05/17/10	13982
121.87	123.0	25	Track conditions. Green signals displayed. BMR 10-21-08. Edit. BMR 3-5-09	12796
125.0	126.0	10	Track conditions. No signals displayed. RNC 5-17-10	13981
126.0	127.0	25	Surface conditions. No signals displayed. BMR 12-29-08	12888
126.10	126.13	10	Account Track Conditions. Green signals displayed per BMR 04/13/10	13917
127.0	138.0	25	Track conditions. No signals displayed. GJN 9-8-09. Edit. GJN 11-13-09. Edit. GJN 04/26/10	13573
128.0	129.0	10	Surface conditions. No signals displayed. GJN 3-30-10	13879
132.0	132.1	10	Account surface condition. Green signals displayed. GJN 04/26/10	13939
138.0	143.0	25	Account Rail Temp. No signals displayed per GJN 08/22/08. Edit. GJN 8-25-08	12685
139.85	140.20	10	Surface conditions. Green signals displayed. GJN 3-15-10	13850
143.0	147.0	25	Track conditions. No signals displayed. GJN 4-19-10	13922
150.68switch	151.11crossing	10	Surface conditions. No signals displayed. GJN 4-6-10 (150.68=South#2switch)	13897
151.0	169.0	25	Track conditions. No signals displayed. GJN 9-15-09. Edit. GJN 4-20-10	13602
151.0	152.0	10	Surface conditions. No signals displayed. GJN 4-13-10	13910
155.0	156.0	10	Account Tie Conditions. No signals displayed per GJN 05/18/10.	13984
157.0	157.15	10	Surface conditions. Green signals displayed. GJN 4-13-10	13912
164.74bridge	166.0	10	Track and water conditions. No signals displayed. MPO 4-15-10	13920
165.0	170.0	10	Track conditions. No signals displayed. RNC 5-18-10	13983
167.0	167.5	10	167.5=Crossing. Account surface condition. No signals displayed. BDC 10/21/09	13700
170.0	171.0	10	Rail conditions. No signals displayed. PGM 3-29-10	13878
178.0	180.0	25	Track conditions. No signals displayed. MPO 7-9-08 Edit. MPO 02/10/09. Edit. GJN 8-4-09. Edit. GJN 10-20-09	12516
182.0	183.0	10	Surface conditions. No signals displayed. GJN 2-24-09. Edit. GJN 5-18-10	12980
183.0	185.0	25	Account track condition. No signals displayed. GJN 10/06/09	13667
183.0	184.0	10	Track conditions. No signals displayed. GJN 1-12-10	13772
183.19crossing		10	Over crossing. Surface conditions. No signals displayed. GJN 2-16-10	13804
Squa Pan	Madawaska	30	Account track conditions no signals displayed.	3686
185.0	188.13crossing	10	Track conditions. No signals displayed. GJN 4-30-09 Edit. GJN 05/27/09. Edit MPO 07/09/09.	13175

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Sub: Madawaska

At / Between	And	Speed	Information	Item
186.10	186.13	10	Between N Wye Switch and Route 11 Crossing Mile 186.13 when entering Madawaska Sub Main Track from North Wye (head end only). This is a Permanent Speed Restriction per KIS 09/30/09.	13657
188.76	191.0	25	Track conditions. Green signals displayed...DMC...3-3-10	13830
190.0	198.0	25	Account track condition. No signals displayed. KLI 06/09/08	12425
190.00	190.17	10	Surface conditions. Green signals displayed. DMC...3-15-10	13848
191.0	192.0	25	Account tie condition. No signals displayed. MPO 09/07/09	13571
193.0	193.5bridge	10	Surface conditions. No signals displayed...DMC...4-5-10	13896
193.5		10	Over Bridge when a 6 axle is used in the consist. MAS 08/04/08	12632
195.05		10	Surface conditions. Green signals displayed...LDF...4-13-10...Edit DMC 04/25/10	13911
196.0	197.0	10	Account Sperry Rails. No signals displayed. MPO 09/23/09...Edit...LDF...3-11-10	13631
198.21		10	Permanent speed restriction in Timetable No. 2 over highway crossing at Mile 198.21 apply to head end only per KIS.	11198
198.77switch		10	Over North # 7 switch Skerry. Surface conditions. No signals displayed...DMC...4-5-10	13895
198.78		20	Permanent speed restriction in Timetable No. 2 over highway crossing at Mile 198.78 apply to head end only per KIS.	11691
202.69		10	Surface conditions. Green signals displayed...DMC...3-9-10	13842
203.0	222.0	25	Account Track Conditions. No signals displayed per RNC 05/19/10.	13989
204.0	204.28crossing	10	Account surface condition. No signals displayed. DMC 03/17/10...Edit...DMC...3-29-10	13854
205.0	209.0	10	Account Track Conditions. No signals displayed per RNC 05/19/10.	13986
205.83	206.0	10	Track conditions. Green signals displayed...DMC...5-17-10	13978
209.28		10	Surface conditions. Green signals displayed...DMC...3-24-10	13870
210.0	211.0	10	Account Tie Conditions. No signals displayed per RNC 05/19/10.	13987
211.0	217.62crossing	10	Account Surface Conditions & Sperry Rails. No signals displayed per MPO 10/08/09.	13679
212.0	218.0	25	Account Rail Temp...Edit .25 MPH per MPO 08/27/08	11710
219.0	220.0	10	Account Track Conditions. No signals displayed per RNC 05/19/10	13988
220.21crossing		10	Account tie condition. Green signals displayed. DMC 04/26/10	13938
224.18crossing	224.51bridge	10	Account Surface Conditions. No signals displayed per DMC 05/19/10.	13990
226.67crossing		10	Sperry rail. No signals displayed...MPO...9-28-09	13645
228.0	228.36	10	Account Surface Conditions. No signals displayed per LDF 11/12/09 Edit...228.36=crossing. MPO 12/07/09	13723
229.82crossing		10	Over crossing. Surface conditions. No signals displayed...DMC...3-8-10	13839
230.0	230.75crossing	10	Sperry rail. No signals displayed. MPO...9-28-09	13646
230.75crossing		10	Over crossing. Track conditions. No signals displayed...LDF...6-22-09	13343
231.0	232.0	25	Tie conditions. No signals displayed...MPO...9-7-09	13565
234.0	235.0	10	Account track condition. No signals displayed. JLC 04/04/10	13894
234.29		25	Tie conditions. Green signals displayed...MPO...8-31-09	13528
234.46	236.44	10	Track conditions and Sperry rail. Edit. Green signal displayed 234.46...236.44=Bridge MPO 12/07/09	13598
237.0	238.0	25	Tie conditions. No signals displayed...MPO...8-31-09	13530
239.0	240.0	25	Track conditions. No signals displayed...LDF...5-7-09	13188
242.80		10	Movements must not exceed 10 MPH from a point 300 feet from the crossing to the crossing when approaching North Perley Brook Road, Mile 242.80. This restriction applies to head end only. (Permanent Speed	11440

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Sub: Madawaska

At / Between	And	Speed	Information	Item
			Restriction) per KIS 06/13/07	
244.0	255.0	25	Account Rail Temp...Edit 25 MPH per MPO 09/03/08	12684
244.08crossing	245.00	10	244.08 crossing to 245.00 10 MPH account track conditions. no signals displayed.. MPO...09/14/09 Edit to read 244.08 LDF 09/28/09	13599
245.0	245.25	10	Track conditions Green signals displayed...LDF...4-27-07	11175
249.0	250.0	10	Track conditions. No signals displayed...DMC...5-19-10	13985
250.44		10	Over Crossing account Tie and Surface conditions. No signals display	13926
250.44		10	Over Crossing account Tie and Surface conditions. No signals displayed per MPO 04/20/10.	13927
252.45crossing		10	Over crossing Surface conditions. No signals displayed ..DMC...3-22-10	13861
257.00	258.00	25	Account tie conditions no signals displayed...MPO...08/31/09	13536
258.0	259.0	10	Account Track Conditions and Sperry rails. No signals displayed per JLC 11/15/09	13080
259.0	260.0	25	Surface conditions. No signals displayed...DMC...3-16-10	13853
260.0	261.0	10	Surface conditions. No signals displayed...DMC...3-22-10...Edit..GJN..5-11-10	13862
261.33	261.52	10	Track conditions. Green signals displayed. MPO...10-27-05...Edit MPO 11/12/08.	9734
Summit		NA	North switch has been retired ..BMR...5-8-08	12335
124 96switch		NA	Switch has been retired at Staceville.. BMR...4-9-10	13902
Sherman		NA	Car on Passing Track at Sherman (track is full) per JLC 11/15/05.	9802
Sherman		NA	Tracks 2 and 4 at Sherman are closed for the winter for car storage. GJN 12/07/09...Edit..GJN...3-30-10	13749
Island Falls		NA	C-spur open for use for about 800 feet to RED signal...GJN...12-15-09	13754
Oakfield		NA	Do Not block Houlton sub or the Wye account track machines coming out of Houlton shop for summer work and can't get by. .BDC...5-14-09	13196
Oakfield		NA	Nappadoggin yard closed switch locked and spiked...GJN...4-23-10	13932
Smyrna Mills		NA	#2 Track closed account Snow per DDB 03/23/10	13867
Howe Brook		NA	Car in siding...AJS...9-28-06	10678
Howe Brook		NA	Siding closed for the winter. 72 Hrs notice required to reopen.GJN 12/13/07	11946
170.0	171.0	NA	Watch out for track material between rails...PGM...3-31-10	13889
Squa Pan		NA	Watch out for rails between main line and track # 1 North of crossing 185.57...GMW...3-23-10	13866
Squa Pan		NA	Watchout for track material between main-line and track # 52...LDF..2-17-10	13805
Ashland		NA	Cars in siding per DVJ 03/24/06	10068
Skerry		NA	E-spur closed account rail conditions ..LDF...3-2-09	12989
McDonald		NA	"D" spur is closed. Switch spiked. MPO 05/20/09	13210
McDonald		NA	Watch out for drain hole around E-track switch...LDF...1-28-10	13786
Winterville		NA	"A" Spur is closed further notice per MPO 07/14/09.	13414
Wallagrass		NA	Siding closed account surface conditions...LDF...01-13-09...Edit...LDF..6-9-09	12908
Soldier Pond		NA	Siding closed account track conditions...LDF...8-11-08	12652
Fort Kent		NA	Track #15 can be used from the North End up to derail and red flag per PJR 12/17/08. Edit 12/23/08 Back lead and Dead River Track are open and OK to use per PJR.	12875
Madawaska Yard		NA	Watch out for rough terrain per LDF 10/20/09.	13699
Madawaska		NA	"U" track must be left clear so not to block MOW machinery from getting	12102

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Sub: Madawaska

At / Between	And	Speed	Information	Item
			out, PJR 03/11/08	
Madawaska		NA	"P" track...New wheel chock bumper installed. Use caution when setting cars...LDF...10-13-09	13690
Madawaska Yard		NA	"P" Track- Operating lever on 20000 series box cars will not clear wheel chucks at bumper per LDF 10/20/09	13698
Madawaska		NA	"U" track. Track machinery will not clear man on side of car...LDF...10-27-09	13709
Madawaska		NA	North # 4 switch lined, locked and spiked for # 4 track till further notice...JLC.. 5-14-10	13974
Madawaska		NA	South # 51 switch is lined and locked for track # 51. Private lock on switch...JLC...5-17-10	13979

Sub: Millinocket

At / Between	And	Speed	Information	Item
31.00	72.00	30	Maximum speed on main track between north cautionary limit sign No.Me.Jct. and mile 72 Millinocket Sub, not to exceed 30 MPH.Edit ...RNC 11/08/06 Edit RNC 11/11/06	3673
31.00	36.00	25	Track Conditions. No signals displayed per RNC 05/06/03..Edit..KRB...7-15-04...Edit 11/08/06...RNC...Edit...JDW...7-1-08...Edit..BMR...10-26-09	6898
45.46		10	Account Track Conditions. Per BRussell, May 16th 2010.	13977
52.84	52.90	25	Surface conditions. Green signals displayed...BMR...3-2-10	13828
54.0	60.0	25	Tie conditions. No signals displayed...BDB...4-13-10	13916
66.0	67.0	25	Account surface condition. No signals displayed BMR 01/26/10	13784
68.0	68.69crossing	25	Surface conditions. No signals displayed...BMR...3-23-10	13863
68.9		25	Over crossing account Geo car. No signals displayed. BDB 05/27/09	13237
69.0	71.0	25	Account tie condition. No signals displayed BMR 04/26/10	13937
71.0	72.0	25	Surface conditions. No signals displayed...BMR...3-1-10	13820
72.0	73.0	25	Account track condition.Green signals displayed..RNC 03-08-01..Edit KRB 09/10/01..Edit..RNC..11-19-04..Edit..RNC..6-16-05 Edit RNC 07/02/05. Edit RNC 08/17/05...Edit.. RNC...9-15-05	4945
73.00	86.00	35	Track Conditions. No Signals Displayed...RNC...11/08/06	10798
82.0	83.0	25	Account Surface Conditions. No signals displayed per BMR 04/21/09.	13152
86.00	104.00	30	Track Conditions. No Signals Displayed... RNC...11/08/06	10799
87.0	SNS Mkt.	25	Geo car. No signals displayed ..RNC...7-7-05...Edit..KRB...3-16-06...Edit...DLM...6-16-06	9270
95.97	96.0	10	Surface conditions. Green signals displayed...BMR...5-10-10	13968
104.0	105.0	10	Track conditions. No signals displayed...BMR...1-18-07	10941
Millinocket		10	Do not exceed 10 MPH on # 73 track account Sperry rail...DLM...6-7-07	11402
105.0	106.0	10	Surface conditions. No signals displayed ..BMR...4-13-09	13118
106.0	107.0	10	Surface conditions. No signals displayed...BMR...2-19-10	13810
No. Me. Jct.		NA	U-switch out of service...Contact Ben Boone if needed...BDB.. 9-16-09	13606
No Me Jct		NA	#8 Receiving Track closed Private locks applied per WAW 04/29/10.	13947
No. Bangor		NA	Box trailer will not clear man on side of car on the North-end...MJC...11-13-09	13724
38.07		NA	Watch-out for rough terrain...BMR...3-2-10.. Edit...DWD...3-3-10	13829
54.05crossing		NA	Crossing has been removed...BDB.. 4-12-10	13907

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Sub: Millinocket

At / Between	And	Speed	Information	Item
Derby		NA	Scale track. No foot traffic on scale account defective decking...JP Beals...4-29-09	13172
Derby		NA	No high-cube cars on all tracks beyond the South Wye Switch...SWJ.. 2-26-10	13874
Brownville		NA	Log pile on West-side of track # 2 will not clear man on side of car...BDB ..11-20-09	13737
Brownville	72.0	NA	Watch out for rail piles on East side of mainline between North #1 switch and North #2 switch. . KPR 9/16/05	9560
Packards		NA	Cars in siding for storage...AJS...9-29-08	12759
Golden Road		NA	When leaving equipment unattended in Golden Road Spur, when car numbers allow, three hand brakes must be applied on each end of equipment that is over apex of grade (down-grade sides) in spur...KIS...2-2-10	13789
Millinocket	West Mill	NA	Automatic warning devices at Spruce St.- Poplar St. and Elm St. out of service further notice. Protect crossings in accordance with Rule 103g...GAA...4-9-09	13102
West Mill		NA	Automatic warning devices Store room crossing out of service further notice. Protect crossing in accordance with Rule 103g. JTB...4-20-09	13144
Millinocket		NA	The designated Locomotive Servicing and Car Shop Repair Track Blue Signal Area at Millinocket is redesignated as follows: Track 23-Protection on Both Ends of Track. Track 25-Protection on Both Ends of Track. No. 1 House Switch-Protects House, Fuel, 1& 2 and Sand Tracks...KIS...2-18-10	13809

Sub: Moosehead

At / Between	And	Speed	Information	Item
Brownville Jct		05	Do not exceed 5 MPH on Van Track at Brownville Jct	73
Brownville Jct		05	Do not exceed 5 MPH between # 1 switch to the B&A middle on the west end. . JPB...7-26-00. Edit...EDH. 9-14-06	4381
Brownville Jct	49.5	30	Account Track conditions. No Signals displayed.. RNC 11/06/06...Edit ... RNC 11/07/06...Edit...RNC...11-13-06...Edit...RNC...11-15-07...Edit RNC 06/24/09. Edit...BDB...10-23-09	10790
33.21bridge		25	Over bridge. Track conditions. No signals displayed...Beals...5-22-08...Edit...DWD...5-23-08	12373
49.5	54.7	35	Track conditions. Green signals displayed.. RNC ...11-15-07	11910
54.7	55.35	30	Track conditions. Green signals displayed...RNC...11-15-07	11912
55.35	59.0	35	Track conditions. Green signals displayed...RNC.. 11-15-07	11913
65.53	65.73	30	Rail conditions. Green signals displayed...RNC...11-13-06...Edit...RNC...9-11-07...Edit...MEF. .9-12-07	10812
72.0	74.0	30	Track conditions No signals displayed...RNC...11/07/06...Edit...RNC...11-13-06	10794
84.0	89.4	35	Track conditions. Green signals displayed...RNC...11-13-06	10811
89.4	SNS Boundry	30	Account Track Conditions. Green signal displayed at 89.4 per RNC 11/01/06...Edit...RNC...11-13-06	10773
SNS Boundary	116.4	25	Account track condition. (116.4=ECLS Megantic) Edit 10/09/09 DA	11959
Brownville Jct		NA	Rock has been dumped along East End of B & A Tracks and North Side of CP Main at the crossover per LAS 05/12/10	13971
18.6		NA	Hot Box Detector out of service...REC...6-29-09	13375

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Sub: Moosehead

At / Between	And	Speed	Information	Item
Jackman		NA	To prevent against run away cars,one chain or wooden wedge (aka trig)must be placed under(up against) one wheel in each loaded cut of cars left at LMS or on siding at LMS. On or about Wednesday, February 10,2010, buckets will be placed for storage of chains or wooden wedges near location where equipment is normally spotted. Train crews must notify RTC which loads are trigged 02/08/10 KIS	13795
Holeb		NA	Siding closed for winter...JPB...3-2-10	13825
Vachon		NA	Equipment in siding at Vachon ..AJS ..2-5-09	12940

Sub: Newport

At / Between	And	Speed	Information	Item
0.00	58.40	25	Account track conditions...Signals for 0.00 are displayed at 0.00. Edit 09/10/06 RDW	3739
5.10 Bridge		10	Over bridge. Signals are displayed...GL...5-13-08	12342
10.30 Bridge		10	Over bridge. Signals are displayed...GL...5-13-08	12343
12.60 Bridge		10	Over bridge. Signals are displayed...GL...5-13-08	12344
33.0	38.0	10	Track conditions. Signals are in place...R-N...6-19-09...Edit SAA 07/14/09...Edit.. G.Lessard.. 7-30-09	13331
Newport		NA	Restriction clearance sign has been installed for the West-side of track between the mileage of 40.1 and 39.8 Beebe spur...RDW ..12-3-09	13746

Sub: Presque Isle

At / Between	And	Speed	Information	Item
0.0	0.8	10	Gauge conditions. No signals displayed...GJN...01-06-09	12898
Squa Pan	Presque Isle	25	Track conditions. No signals displayed...GJN...5-23-07	11322
6.0	7.0	10	Account track condition. No signals displayed. GJN 10/08/09...Edit..GJN...12-29-09	13677
8.0	9.0	10	Track conditions. No signals displayed...GJN...5-14-09	13199
9.25	9.4	10	Account surface condition. Green signals displayed. GJN 05/21/09	13212
9.72crossing		10	Over crossing. Surface conditions. No signals displayed...GJN...3-18-10	13858
10.0	11.0	10	Account Surface Conditions. No signals displayed per GJN 04/28/10.	13946
11.01crossing		10	Over crossing. Surface conditions.No signals displayed...GJN...6-11-09	13310
12.30	12.85	10	Track conditions. Green signals displayed...GJN...4-23-10	13933
13.35	13.55	10	Surface conditions. Green signals displayed ..GJN 6-19-09	13334
14.03bridge		10	Over bridge. Surface conditions. No signals displayed...GJN...5-11-10	13970
16.85		10	Surface conditions. Green signals displayed...GJN...2-24-10	13815
17.93	18.0	10	17.93=South #2 Switch Mapleton. Account Track Conditions. No signals displayed per KRR 10/24/08.	12809
18.0	18.7	10	Track conditions. Green signals displayed...GJN...4-23-10	13934
19.0		10	Account surface condition. No signals displayed. LDF 04/26/10	13936
19.23crossing		10	Over crossing. Surface conditions. No signals displayed...GJN.. 2-24-10	13814
20.0	21.0	10	Surface conditions. No signals displayed...GJN...8-7-09	13472
22.0	24.0	10	Account surface condition. Green signals displayed. GJN 05/21/09...Edit..GJN...7-1-09...Edit..GJN ..12-29-09	13214
23.95crossing		10	Over crossing. Surface conditions. No signals displayed ..GJN...4-30-09	13181
Presque Isle		05	On "A" Spur- Tatermeal Track account Track Conditions per WCL	11670

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Sub: Presque Isle

At / Between	And	Speed	Information	Item
			08/23/07....Edit GMW 11/06/08....Edit GMW 11/12/09.	
Presque Isle		10	On the old Mainline between Bike switch and Court switch account track condition. No signals displayed. GJN 06/05/08	12412
Presque Isle		05	Between G-switch and Columbia Forest Product . REK...4-10-09	13111
1.8		NA	Watch out for over-head power line crossing track...GPH...8-14-08	12663
Presque Isle		NA	Watch-out for rough terrain and tie piles along G-track(Columbia Forest)...LDF...4-19-10	13923

Sub: Searsport

At / Between	And	Speed	Information	Item
Searsport	No.Me.Jct.	25	Maximum speed on the Searsport Sub is now 25 MPH...JTL...1/7/00	3559
1.20	NCLS Searsport	10	Track conditions. No signals displayed...DWD...6-25-09 Edit BDB 06/29/09...Edit...LAS...9-14-09...Edit...BDB...3-22-10	13369
2.0	3.0	10	Track conditions. No signals displayed...JPB...3-31-10	13888
4.80	4.95	10	Over Culvert account Track Conditions. Green signals displayed per DWD 09/30/09...Edit DWD 10/14/09.	13656
19.90crossing		10	Over crossing. Surface conditions. No signals displayed...BDB...2-24-10	13813
Searsport		NA	Track # 14 at Sprague closed account track conditions...JPB...9-17-09	13610
All		NA	Effective 0001 Sunday, April 11, 2010 a Remote Protection Zone is established in Cautionary Limits and on non-main track between Mile 4 Searsport Sub and end of track at Searsport. The Searsport Switching Zone between Mile 1 and end of track Searsport Sub is removed. Movements within the Remote Protection Zone between Mile 4 and end of track are governed by Operating Bulletin containing Remote Protection Zone Instructions. Currently Operating Bulletin No. 2-186 contains these instructions.	13892
Searsport		NA	Track-T closed switch is spiked and locked...BDB...4-21-10	13928

Sub: Van Buren

At / Between	And	Speed	Information	Item
1.00	2.00	10	Account Track Conditions. No Signals Displayed .RFM.. 06/18/07	11457
2.0	4.0	10	Tie conditions No signals displayed .JLC...5-6-10	13961
3.65		10	Surface conditions. Green signals displayed. .DMC...3-18-10	13856
4.6	5.0	10	Track conditions. Green signals displayed...MPO...7-30-09...Edit. DMC...3-18-10	13449
6.84		10	Tie conditions. Green signals displayed...DMC...5-14-10	13973
10.0	15.0	10	Sperry rail No signals displayed...JTL...10-2-09	13661
16.0	22.0	10	Account sperry rails. No signals displayed. JTL 10/05/09...Edit JLC 04-06-10	13663
St. David		NA	Track machine in spur. Private lock on switch .LDF...11-19-08	12855
Grand Isle		NA	#1 Track closed account weed conditions per MPO 08/06/09	13471
Blier		NA	Spur closed until further notice.. RMC...9-5-08	12729

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Restrictions Received Enroute	RTC	Time

Daily Operating Bulletin Extension

Daily Operating Bulletin Effective _____ **is extended until** _____
_____ **at** _____ **(Location). RTC** _____

Acknowledged by: _____ **Time:** _____

**John W. Schultz
Vice President Transportation**

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB 1043 (Sub-No. 1)

MONTRÉAL, MAINE & ATLANTIC RAILWAY, LTD.--
DISCONTINUANCE OF SERVICE AND ABANDONMENT--
IN AROOSTOOK AND PENOBSCOT COUNTIES, MAINE

REBUTTAL VERIFIED STATEMENT OF THOMAS N. TARDIF

My name is Thomas N. Tardif, and I am the Director-Real Estate & Environmental Affairs for Montréal, Maine & Atlantic Railway, Ltd. ("MMA"). I submitted a Verified Statement in connection with the application of MMA to abandon approximately 233 miles of line in Penobscot and Aroostook Counties, Maine. The purpose of this Rebuttal Verified Statement is to respond to certain environmental arguments made by the State of Maine (the "State") through its consultant, Gary Hunter.

At pages 18-19 of his Verified Statement, Mr. Hunter asserts that the additional trucks that will be on the highways after the abandonment will increase the traffic over busy grade crossings and will not reduce the probability and instance of crossing accidents. This assertion is not supported by any facts, and grade crossing safety will increase as a result of the abandonment.

Federal Railroad Administration statistics show that in 2009 there were 1,625 public grade crossing incidents in the United States (*Public Highway-Rail Incidents Reported on FRA Form F 6180-57, January – December, 2009*). Of these, only 282, or 17%, involved a collision with a tractor trailer (or lone tractor). All other incidents (83%) were attributable to something other than a tractor-trailer (car, pickup truck, van, bus,

etc). It should also be noted that of the 1,625 incidents reported nationwide, only four occurred in Maine. None of those in Maine involved a tractor trailer (two pedestrians and two cars), and three of the four incidents were with passenger trains traveling between 50 and 68 miles per hour at crossings with gate protection.

While there may be additional trucks at the remaining crossings, there will be a far greater reduction in exposure to potential incidents from all modes of traffic by removing eighty crossings from the Abandonment Lines. After the abandonment, there will only be two main road grade crossings left in Aroostook County, both of those being on Route 1 between Van Buren and Madawaska, which is not even on the Abandonment Lines.

In response to Mr. Hunter's statement that the abandonment "will likely increase traffic over busier grade crossings", an inspection of roadways in the State of Maine shows that, to get to or from Aroostook County post abandonment, a truck can all but avoid exposure to any railroad crossings by use of the interstate, state routes and secondary roadways.¹ A review of the "*Maine Department of Transportation High Crash Location Listings 2006-2008*" shows statewide 994 "intersections" rated as potential "high crash locations". Of those 994 locations, only four are railroad grade crossings and none these are on the routes listed in footnote 1 below.

¹ Interstate 95 from New Hampshire border to Houlton, Maine (no crossings).
Route 2 from New Hampshire border to Newport, Maine, then I-95 (one crossing at Norridgewock).
Quebec border through Coburn Gore using various routes (27, 16, 201A, Route 2, 139, etc to I-95 at either Waterville or Newport (one crossing at Norridgewock, one at Anson (Route 8) and depending on the route, one of two crossings at North Anson (Rte 234 or Rte 16), however, the Anson and North Anson crossings are on an extremely light density traffic line.
Quebec Border through Jackman using Route 201 to Skowhegan, then Route 2 to Newport and I-95 (one crossing at Jackman).

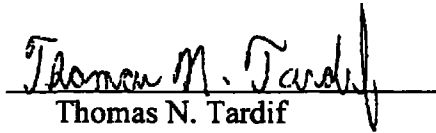
VERIFICATION

State of Maine

ss:

County of Penobscot

I, Thomas N. Tardif, being duly sworn, depose and state that I am Director-Real Estate & Environmental Affairs of Montréal, Maine & Atlantic Railway, Ltd. ("MMA"), that I am authorized to sign the foregoing Rebuttal Verified Statement on behalf of MMA, that I have examined all of the statements contained in the Rebuttal Verified Statement and that all such statements are true and correct to the best of my knowledge and belief.


Thomas N. Tardif

Subscribed and sworn to
before me this 26th day of
May, 2010


Notary Public

GAYNOR L RYAN
Notary Public Maine
My Commission Expires May 4, 2015